

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of EVELINE
BARROS-CEPEDA,
Plaintiffs,

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

DEFENDANTS CITY OF BOSTON'S AND THOMAS TAYLOR'S LOCAL RULE
56.1 STATEMENT OF FACTS AND SUPPORTING DOCUMENTATION¹

Pursuant to L.R. 56.1, Defendants Thomas Taylor and the City of Boston submit the following statement of undisputed material facts.² The Defendants state that the Plaintiff cannot adduce any evidence to support any of her claims contained in the Plaintiff's Third Amended Complaint.

I. Officers Flaherty And Connolly's Encounter With The White Taurus Prior to Dunkeld Street.

1. During the early morning hours of September 8, 2002, shortly after Boston Police Officers Robert Connolly and Debra Flaherty began their midnight to 7:30 a.m. shift, were traveling in a marked Boston Police Department cruiser patrolling the area of Columbia Road, Dorchester, MA. Exhibit B, Debra Flaherty Deposition at 30:15-24 ("Exhibit B"); 31:1-5; Exhibit B, Robert Connolly Deposition at 45:9-21 ("Exhibit C").

¹ All of the supporting documentation attached hereto are true and accurate copies. See Exhibit A, Affidavit of Helen G. Litsas.

² These facts are deemed undisputed for purposes of Defendants' Motions for Summary Judgment only.

2. Officer Debra Flaherty was driving and Officer Connolly sat in the front seat passenger side of the police vehicle. Exhibit B at 32:1-8; Exhibit C at 48:8-16.

3. At one point, when Officers Flaherty and Connolly were stopped on Columbia Road, a white Ford Taurus traveled to the intersection of Columbia Road and Hancock Street. Exhibit B at 31:3-24; Exhibit C at 48:17-24; 49:1-21; 50:1-2; Exhibit D, Carlos Fernandes Deposition (“Exhibit D”), at 103:3-24; Exhibit D, Brima Wurie Deposition (“Exhibit E”) at 114:14-20.

4. Prior to reaching the intersection of Columbia and Hancock, the Wurie vehicle had traveled to Cushing Avenue in Dorchester, MA where shots had been fired. Exhibit D at 19:17-24; 90:1-8; 96:18-24; 97:1-2.

5. Officers Flaherty and Connolly then observed the white Ford Taurus fail to stop for a red traffic light. Exhibit B at 31:3-24; Exhibit C at 48:17-24; 49:1-21; 50:1-2; Exhibit D at 103:3-24.

6. After making this observation, Officers Flaherty and Connolly believed that the operator of the white Ford Taurus, Brima Wurie, had violated the traffic laws and they activated their cruiser’s lights and sirens and attempted to stop the vehicle (“Wurie vehicle”). Exhibit B at 31:18-24, 32:1-24; Exhibit C at 48:17-24; 49:1-21; 50:1-2; 55:11-14; Exhibit E at 101:17-18.

7. The police cruiser’s lights and sirens were activated throughout Officers Flaherty and Connolly’s pursuit of the Wurie vehicle through various city streets, including Dunkeld Street. Exhibit D at 109:1-8; Exhibit F, Luis Carvalho Deposition (“Exhibit F”) at 149:8-15; 166:19-21.

8. Wurie, however, did not heed the police instruction and failed to stop his vehicle for Officers Flaherty and Connolly. Exhibit B at 33:3-21; Exhibit C at 56:7-14; Exhibit D at 108:16-18; Exhibit E at 72:22-24; 101:17-18; 105:2-4.

9. Wurie continued to evade Officers Connolly and Flaherty as he navigated various city streets, including Bird Street, Dudley, Magnolia, Wayland, Howard, Quincy & Dunkeld Streets. Exhibit F at 151-160.

10. While Wurie recognized that that the Boston police were attempting to pull him over, he refused to stop his vehicle because his driver's license had been suspended, he was on parole and he did not want to return to incarceration. Exhibit E at 77:1-9; 101:3-5; 109:15-20; 121:4-13; 122:9-13.

11. Wurie continued to evade Officers Flaherty and Connolly as he drove onto Dunkeld Street in Dorchester, MA toward the direction of Fayston Street. Exhibit E at 108:6-19.

12. Throughout the pursuit of the Wurie vehicle, Officer Flaherty notified the Boston Police Department's Operations Department of their location and of their attempt to apprehend Wurie's vehicle. Exhibit B at 37:5-11; Exhibit C at 38:11-22.

13. Officer Flaherty conducted these broadcasts over Channel Six of the BPD radio. Exhibit C at 92:1-23.

14. Officer Flaherty's broadcasts of Wurie's fleeing vehicle were not heard by her fellow officers, Officers Thomas Taylor and Michael Paillant because Officers Taylor and Paillant were assigned to District B-3, a different district than Officers Flaherty and Connolly's District 11 with a different radio channel, Channel Eleven, than her. Exhibit B at 24: 13-15; Exhibit C at 92:1-23.

II. The Backdrop of Dunkeld Street and Fayston Street

15. Dunkeld Street is a narrow and very short street approximately 200 feet in distance, which intersects with Fayston Street. Exhibit G, Officer Michael Paillant Deposition (“Exhibit G”) at 156:12-13; Exhibit E at 141:2-9;

16. Dunkeld Street is also a densely populated residential neighborhood that is very busy with many buildings and apartment complexes and on the night of the incident, there were many people on or near Dunkeld Street. Exhibit E at 160:13-19; Exhibit D at 124:2-5..

17. At the time the Wurie vehicle traveled onto Dunkeld Street, there were many parked cars lining the street. Exhibit E at 141:2-9.

18. As the Wurie vehicle traveled onto Dunkeld Street, it was dark out. Exhibit D at 112:15; 118:4.

III. Officers Taylor And Paillant’s Assignment On Dunkeld Street

19. At the time that the Wurie vehicle traveled onto Dunkeld Street on September 8, 2002, Boston Police Officers Taylor and Paillant, officers assigned to District B-3, were conducting an unrelated sexual assault investigation near 85 Fayston Street, Dorchester, MA. Exhibit G at 8:22-23; 9:1-9; 68:19-24; 69:1-5.

20. Officer Paillant was standing outside on Fayston Street standing by his marked police cruiser, which was located at the top of Dunkeld Street, at its intersection with Fayston Street. Exhibit G at 71:8-24; 72:1-2; Exhibit H, Thomas Taylor Deposition (“Exhibit H”) at 57:20-24; 58:1-14.

21. Sitting inside Paillant’s cruiser was the suspect in the alleged assault, James Nicholas. Exhibit G at 69:1-19; Exhibit J, James Nicholas Deposition at 51:22-24; 52:1-13; 18-24 (“Exhibit J”).

22. While Officer Paillant stood outside his cruiser, his partner, Officer Taylor was located away from the cruiser, near 85 Fayston Street meeting with the alleged victim in the assault. Exhibit G at 69:2-5; Exhibit H, Thomas Taylor Deposition (“Exhibit H”) at 56: 12-20; 57:16.

23. At all times during September 8, 2002, Officers Taylor and Paillant broadcast from Channel Three on the BPD radio and did not have any radio contact with Channel Six. Exhibit C at 92:1-23.

IV. The Occupants Of The Wurie Vehicle

24. As the Wurie vehicle traveled onto Dunkeld Street, the decedent, Eveline Barros Cepeda (“decedent”), was sitting in the backseat of the Wurie vehicle along with Luis Carvalho and Maria DaRosa. Exhibit E at 102:1-2; Exhibit F at 170:19-21.

25. Carlos Fernandes was sitting in the front passenger seat of the vehicle. Exhibit E at 101:12-24; 102:1-2.

26. Carvalho a passenger in the back seat of the Wurie vehicle, remained in a “ducked” position as the vehicle traveled up Dunkeld Street. Exhibit F at 170:11-16.

V. The Wurie Vehicle’s Flight Onto Dunkeld Street

27. Officer Paillant immediately took notice of the Wurie vehicle and the BPD cruiser, with its lights flashing, following closely behind it, as it traveled up Dunkeld Street. Exhibit G at 71:222-24; 72:1-2.

28. As the Wurie vehicle traveled onto Dunkeld Street, a bystander, Travo Carter, was standing on the sidewalk near 5 Dunkeld Street and heard the vehicle screeching and accelerating up the street. Exhibit I, Travo Carter Deposition (“Exhibit I”) at 29:9-24; 30:17-19; 31:3-19

29. Officer Paillant, after observing the Wurie vehicle evade the cruiser, determined that the vehicle had committed the crime of refusing to stop for police. Exhibit G at 83:14-20. with its lights flashing,

30. To assist with the cruiser's attempt to stop the Wurie vehicle, Officer Paillant stepped into the street in front of the Wurie vehicle. Exhibit G at 71:8-24; 72:1-2; 72:13-24; 73:1-3; Exhibit I at 29:9-24; 30:17-19; 31:3-19.

31. As Officer Paillant stood in the roadway, he directed Wurie stop his vehicle using verbal and hand commands. Exhibit G at 72:13-24; 73:1-3; Exhibit B at 68:7-8; Exhibit E at 114: 14-20; 124:5-24; 128:14-18; Exhibit I at 29:9-24; 31:3-19.

32. Wurie refused to do so despite observing, at the intersection of Dunkeld and Fayston Streets, the police officer waving his hand at him in an effort to stop his vehicle. Exhibit E at 114: 14-20; 124:5-24; 128:14-18.

33. At no time did Wurie heed Officer Paillant's commands nor did he stop his vehicle as Wurie traveled up Dunkeld Street. Exhibit G at 73:7-10; Exhibit D at 105:2-4.

34. In Wurie's view, the police officer had seen the cruiser, with its flashing lights, following the Wurie vehicle. Exhibit D at 130:10-18.

VI. The Wurie Vehicle's Encounter With Officer Paillant On Dunkeld Street

35. Nonetheless, Wurie continued to disregard Officer Paillant's commands and consequently, Officer Paillant withdrew his firearm, Exhibit G at 73:7-21, and pointed it at the Wurie vehicle, again commanding the Wurie vehicle to stop. Exhibit G at 76:22-24; Exhibit D at 109: 14-20; Exhibit E at 131:2-17.

36. The Wurie vehicle did not stop for Officer Paillant. Exhibit D at 109: 14-20; Exhibit E at 131:2-17; Exhibit G at 76:22-24.

37. At the time, Officer Paillant was located near the intersection of Dunkeld and Fayston Street and the Wurie vehicle was located approximately halfway up Dunkeld Street. Exhibit G at 73:11-21.

38. After again failing to heed Officer Paillant's commands, the Wurie vehicle continued to travel in Officer Paillant's direction, despite Officer Paillant's position directly in front of the Wurie vehicle. Exhibit G at 115:17-24.

39. As the vehicle moved closer, Officer Paillant believed that the Wurie vehicle was going to strike him. Exhibit G at 101:17-20.

40. James Nicholas, who remained in Paillant's cruiser, also thought the Wurie vehicle was going to strike him. Exhibit J at 30: 23-24; 31:1-7.

41. The Wurie vehicle was then right upon Officer Paillant ---"right up on [him]." Exhibit G at 93:5-8.

42. As the Wurie vehicle continued to travel in the direction of Officer Paillant, Exhibit G at 78:16-17, Officer Paillant attempted to move to his left (the vehicle's right passenger side), in an effort to move out of the way of the Wurie vehicle. Exhibit G at 92:3-24; 93:1-14; Exhibit D at 111: 1-19; Exhibit E at 124:5-24; Exhibit I at 46:7-18.

43. Wurie observed the police officer in front of his vehicle moving in a frenzy and moving to Wurie's right. Exhibit E at 139:2-24.

44. Despite Paillant's efforts, the front right side of the Wurie vehicle struck Officer Paillant. Exhibit B at 45:24; 46:1-6; Exhibit C at 70:19-24; 73:1-3; Exhibit D at 110:19-24, 111:1-12; Exhibit G at 92:3-24;93:1-14; Exhibit H at 73:5-8; Exhibit I at 43:22-24;44:1-4;16-23; 46:7-18; Exhibit L, Affidavit of Elizabeth Ziolkowski ("Exhibit L"); Exhibit M, Transcript of Commonwealth v. Brima Wurie Plea Hearing ("Exhibit M") at 15-27.

45. The vehicle made contact with Officer Paillant's body. Exhibit G at 114: 8-11; Exhibit E at 127:20-24; 128:1.

46. During impact, Officer Paillant's body moved onto the hood of the Wurie vehicle. Exhibit G at 112:20-24; 113: 1; Exhibit C at 73:18-24; 75: 21-24; Exhibit I at 43:22-24; 44:1-4;16-23.

47. After the Wurie vehicle made contact with Officer Paillant, Officer Paillant fell off the vehicle to the ground, along the passenger side of the Wurie vehicle, and for a few seconds remained bent down on the ground with his knees bent while the Wurie vehicle continued to move and turn onto Fayston Street from Dunkeld Street. Exhibit C at 76:6-24; Exhibit G at 127:1-22, 129:4-11, 130:11-24; 131:1-21, 145:16-19; Exhibit I at 31: 20-23; 43:3-21.

48. Carter observed the right side of the Wurie vehicle strike the police officer, causing the officer to fall to the side of the vehicle onto the ground. Exhibit I at 31: 20-23; 43:3-21.

49. Meanwhile, Carlos Fernandes, seated in the front seat of the Wurie vehicle, first observed a police officer in front of their vehicle and then observed the police officer dive towards the passenger side of the vehicle. Exhibit D at 111:1-19.

50. Wurie, however, lost sight of the officer after the vehicle made contact with the officer's hand. Exhibit E at 139:2-24.

VII. Officer Taylor's Efforts To Protect Officer Paillant And The Public From Harm By The Fleeing Wurie Vehicle On Dunkeld Street

51. While Officer Taylor was walking back towards the cruiser along with the alleged assault victim, from approximately 85 Fayston Street, he observed Officer Paillant standing outside the cruiser on Fayston Street near 77 Fayston Street. Exhibit H at 56:17-21; 57:14-24;

58:3-14.

52. Immediately after making this observation, he next observed Officer Paillant look down Dunkeld Street and make a noise, "What the?" Exhibit H at 60:3-7.

53. Officer Taylor then observed Officer Paillant walking more towards Dunkeld Street to more in the middle of Fayston Street. Exhibit H at 60:13-16.

54. Officer Taylor then stepped off the curb to the location of where the line of parked cars would be. Exhibit H at 66: 5-15.

55. Officer Taylor next observed Officer Paillant step in front of the vehicle yelling at the Wurie vehicle to stop and putting his hands up. Exhibit H at 66:16-20.

56. Then, almost instantly, Officer Taylor heard a car engine "rev up" and getting louder and then noticed Officer Paillant withdraw his firearm. Exhibit H at 67:7-12; 68:1-9.

57. Officer Taylor then observed Officer Paillant move his gun in a pumping motion. Exhibit H at 68:13-24; 69:1-12.

58. When Officer Taylor observed Officer Paillant take out his firearm, Officer Taylor then withdrew his firearm and advised the alleged victim to wait on the sidewalk. Exhibit H at 69:17-22.

59. Officer Taylor also simultaneously observed a white car travel up Dunkeld Street and collide with Officer Paillant as Paillant was trying to move to his left (the vehicle's right). Exhibit H at 72:8-11; 73:9-13.

60. From Officer Taylor's vantage point, it appeared that the front of the Wurie vehicle had struck Officer Paillant and caused Officer Paillant to gasp for air. Exhibit H at 73:5-8.

61. Officer Taylor also observed the Wurie vehicle strike Officer Paillant on the front

passenger side of the hood and struck him near the knees, and Officer Paillant fell forward onto the car with his torso. Exhibit H at 92:17-24; 98:1-3.

62. From Officer Taylor's view, when the Wurie vehicle struck Officer Paillant, the vehicle was turning onto Fayston Street and Officer Paillant's feet were kicking "as if he was met with a stronger force and he was trying to keep himself up from being run over. And I can see his hands on the hood and the car was turning." Exhibit H at 94:20-24; 95:1-3; .

63. From that point on, however, as the Wurie vehicle continued to turn onto Fayston Street, Officer Taylor, who was located down Fayston Street on the other side of the Wurie vehicle, lost sight of Officer Paillant and did not know if he would be run over or dragged by the Wurie vehicle. Exhibit H at 56:17-21; 57:14-24; 58:3-14; 97:1; 98:1-6, 112:24, 113:1-6.

64. When Officer Taylor lost sight of Officer Paillant, he raised his arm to discharge his firearm, but first took note of James Nicholas in his cruiser. Exhibit H at 98:2-11; 99:20-24.

65. To reduce the possibility of hitting Nicholas, Officer Taylor stepped into the street so he could discharge his firearm from that location, rather than from the middle of parked cars. 122:1-10.

66. After taking note of Mr. Nicholas and after raising his arm, Officer Taylor stepped from the parked cars to the street, took a breath, asked God to be with him, and then discharged his firearm. Exhibit H at 98:2-16.

67. Officer Taylor believed that as long as the Wurie vehicle continued to move, Officer Paillant was still in danger. Exhibit H at 126:7-11.

68A. Officer Flaherty, who also lost sight of Officer Paillant when he fell to the ground following his contact with the Wurie vehicle, believed that Officer Paillant's life was threatened because the Wurie vehicle drove right into Officer Paillant. Exhibit B at 80:5-11; Officer

Flaherty. Exhibit B at 82:5-9.

68B. When Officer Taylor discharged his firearm, he could see the driver's side of the Wurie vehicle and aimed his firearm in that direction because he was attempting to disable the driver, Brima Wurie. Exhibit H at 106:12-23; Exhibit E at 140:6-13.

69. Officer Taylor received use of deadly force training from the Boston Police Department. Exhibit H at 107:5-7.

70. When Officer Taylor discharged his firearm, he had not seen any passengers in the vehicle and was not aware of the presence of any passengers in the vehicle. Exhibit H at 108:20-22; 109:1-4.

71. When he discharged his firearm, Officer Taylor was looking at the Wurie vehicle's driver's side window and that is where he aimed. Exhibit H at 100:22-24; 101:1-3; Exhibit E at 140:6-13.

72. Wurie himself acknowledged that the police targeted him, that the bullets were aimed right at him and that the driver's side window was shattered by the police bullets. Exhibit E at 140:6-13; 198:7-17; 199:6-12.

73. Wurie also heard shots by his head. Exhibit E at 211:9-11.

74. Officer Taylor made the split second decision to stop the Wurie vehicle by discharging his firearm because he believed that Officer Paillant's life was in danger and he believed that discharging his firearm was the only decision he had. Exhibit H at 109:15-24; 114:23-24; 115:1-8.

75. After Officer Taylor discharged his firearm, the Wurie vehicle continued to travel down Fayston Street. Exhibit H at 124:12-24; 124:1-4; 136: 20-24; 137: 1-3.

76. When Officer Taylor regained sight of Officer Paillant and the vehicle slowed,

Officer Taylor ceased discharging his firearm. Exhibit H at 126:24; 127: 1-12, 124:12-24; 124:1-4; 136: 20-24; 137: 1-3.

77. The incident unfolded very quickly. Exhibit E at 151:15-20; 152:6-15; Exhibit G at 108:4-9; Exhibit H at 72:6; Exhibit J at 30:19-21.75.

78. At not time did Officer Paillant discharge his firearm during the incident. Exhibit G at 108:10-14.

VIII. Wurie's Continued Flight Following Officer Taylor's Discharge Of His Firearm

79. Wurie accelerated down Fayston Street. Exhibit E at 146:17-24; 152:6-15.

80. Wurie continued to drive down Fayston Street and Perth Street until Quincy Street where he exited the vehicle. Exhibit E at 161:5-6.

81. After gunshots were fired, the decedent did not say anything. Exhibit E at 230:16-21.

82. After Officer Taylor discharged his firearm, he saw Officer Paillant get up off the ground and travel down Fayston Street. Exhibit H at 139: 13-22.; 140:3-7.

83. After Officer Taylor observed Officer Paillant travel down Fayston Street, Officer Taylor followed and also ran down Fayston Street in pursuit of the Wurie vehicle. Exhibit H at 139: 13-22.; 140:3-7.

84. At or near Quincy Street, Officer Paillant observed several of the Wurie vehicle occupants jump a fence to avoid capture. Exhibit G at 157:1-10.

85. Officers Flaherty and Connolly also continued to pursue the Wurie vehicle after Officer Taylor discharged his firearm and observed the Wurie vehicle rolling on Quincy Street, with its doors open and the decedent inside in the back seat unconscious. Exhibit B at 76:3-24.

86. Officer Flaherty subsequently called for an ambulance. Exhibit B at 76:3-24.

87. At the hospital, the decedent was pronounced dead and it was determined that she had been shot by one of Officer Taylor's bullets. Exhibit K, Plaintiff's Third Amended Complaint at ¶ 15.

88. As a result of the collision with the Wurie vehicle, Officer Paillant suffered injuries to his knee, elbow and calf and was transported to the hospital following the incident. Exhibit G at 166:1-13.

IX. Post-September 8, 2002 Events

89. Following the incident, a forensic examination of the Wurie vehicle revealed black markings on the hood and front side. Exhibit L, Affidavit of Elizabeth Ziolkowski ("Exhibit L").

90. A forensic examination of Officer Paillant's gun and holster was also conducted as a control sample was taken and examined visually and microscopically. Exhibit L.

91. After these examinations, it was determined that the black markings on the Wurie vehicle's hood and the control sample from the bottom of Officer Paillant's holster contained a black polymer consistent in all measured physical and microscopic properties and chemical composition. Exhibit L.

92. It was further determined that this material obtained from the vehicle's hood and Officer Paillant's holster could have come from the same source. Exhibit L.

93. In connection with the September 8, 2002 incident, Wurie pled guilty to several offenses stemming from the September 8, 2002 incident, assault and battery with a dangerous weapon, operating a motor vehicle to endanger so that the lives or safety of the public might be endangered, leaving the scene after causing personal injury, accessory after the fact to assault by means of a dangerous weapon, and operating a motor vehicle without being licensed. Exhibit M,

Transcript of Commowealth v Brima Wurie, Plea Hearing (“Exhibit M”). at 15-27

94. Wurie received a three year to a three year and one day sentence of incarceration.

Id.

Respectfully submitted,
DEFENDANTS, THOMAS TAYLOR, JR.
AND CITY OF BOSTON,

By their attorneys:

/s/ Helen G. Litsas

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CERTIFICATE OF SERVICE

I, Helen G. Litsas, hereby certify that on this date I served a copy of the foregoing documents upon lead plaintiff’s counsel, Andrew Stockwell-Alpert, by electronic filing and by postage prepaid, first class, U.S. Mail.

6/2/08 /s/ Helen G. Litsas

Date Helen G. Litsas

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**APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANTS, THOMAS TAYLOR, JR.
AND CITY OF BOSTON'S MOTION FOR SUMMARY JUDGMENT**

<u>Exhibit Letter</u>	<u>Description of Exhibit</u>
Exhibit A:	Affidavit of Helen G. Litsas, Esq.
Exhibit B:	Deposition Transcript of Deborah Flaherty
Exhibit C:	Deposition Transcript of Robert Connolly
Exhibit D:	Deposition Transcript of Carlos Fernandez
Exhibit E:	Deposition Transcript of Brima Wurie
Exhibit F:	Deposition Transcript of Luis Carvahlo
Exhibit G:	Deposition Transcript of Michael Paillant
Exhibit H:	Deposition Transcript of Thomas Taylor
Exhibit I:	Deposition Transcript of Travo Carter
Exhibit J:	Deposition Transcript of James Nicholas
Exhibit K:	Plaintiff's Third Amended Complaint
Exhibit L:	Affidavit of Elizabeth Ziolkowski
Exhibit M:	Transcript of <u>Commonwealth v. Brima Wurie</u> , Plea Agreement
Exhibit N:	Maps of Dunkeld and Fayston Streets

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Defendants.

AFFIDAVIT OF ATTORNEY HELEN G. LITSAS

I, Helen G. Litsas, hereby state and depose as follows:

1. I am counsel of record for the Defendants in the above-captioned matter, and make this affidavit on personal knowledge in support of the Defendants' Motion for Summary Judgment.

2. I hereby certify that the exhibits attached to Defendants' Local Rule 56.1 Statement of Facts and Supporting Documentation are true and accurate copies.

Signed under the pains and penalties of perjury this 2nd day of June 2008.

/s/ Helen G. Litsas
Helen G. Litsas

EXHIBIT B

VOL. I
PAGES 1-88
EXHIBITS: A-F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11803-MLW

SHENIA DANCY-STEWART
as Administratrix of the Estate of
EVELINE BARROS-CEPEDA
Plaintiff
vs.

THOMAS TAYLOR, JR. AND THE
CITY OF BOSTON
Defendants

C O N F I D E N T I A L

DEPOSITION OF **DEBRA A. FLAHERTY**, taken on
behalf of the plaintiff, pursuant to the
applicable provisions of the Federal Rules of
Civil Procedure, before Irma Widomski, a
Registered Merit Reporter, and Certified
Shorthand Reporter, No. 131593 in and for the
Commonwealth of Massachusetts, at the Law
Offices of Andrew Stockwell-Alpert, 11 Beacon
Street, Suite 1210, Boston, Massachusetts, on
Monday, February 11, 2008, commencing at 1:00
p.m.

WIDOMSKI COURT REPORTING ASSOCIATES
ONE SUNSET DRIVE
WAKEFIELD, MASSACHUSETTS 01880
(781) 246-0710

1 A. Yes, we received training in Rule 303.

2 Q. Now, how often would you say in the course of
3 your tenure as a police officer that you
4 received training with regard to Rule 303?

5 A. Well, at last twice a year. Every time I went
6 to the range for the inservice training, we
7 would have to review Rule 303.

8 Q. And in September 8, 2002, did you have your own
9 understanding of when Rule 303 permitted you to
10 discharge a firearm at a moving or fleeing
11 vehicle?

12 MS. LITSAS: Objection.

13 A. Did I have my own understanding?

14 Q. Yes.

15 A. Yes, I did.

16 Q. Would that be based on the training that you
17 received inservice?

18 A. Yes, it would.

19 Q. By the way, before you came into this
20 deposition, did you review any written
21 materials?

22 A. Yes, I did.

23 Q. Did you review the transcript of your testimony
24 before the homicide unit?

1 A. I don't know him.

2 Q. How about your partner, Officer Connolly?

3 A. I haven't seen Bobby Connolly in years.

4 Q. Other than the document you already outlined,
5 are there any other documents you recollect
6 reviewing or diagrams or photos of any type
7 before coming in to testify today?

8 A. No.

9 Q. Do you have a memory of the events of September
10 8, 2002, prior to reviewing your transcript of
11 your testimony?

12 A. Yes.

13 Q. One minute, please.

14 (Discussion off the record.)

15 Q. Do you recollect the date of the incident that's
16 brought us here today?

17 A. September 8, 2002.

18 Q. And at approximately 12:30 at night, do you
19 recollect whether you were on duty or not?

20 A. Yes, I do.

21 Q. And were you in a cruiser?

22 A. Yes, I was.

23 Q. Was it a marked cruiser?

24 A. Yes, it was.

1 Q. Was your partner Officer Connolly?

2 A. He was.

3 Q. At some point in the course of the night, did
4 something draw your attention to a white Taurus?

5 A. Yes.

6 Q. Were you -- you recollect where you were
7 situated in district is it 11, did you say, or
8 ten, where you were situated on the streets when
9 something drew your attention to the white
10 Taurus?

11 A. Yes, I was.

12 Q. Where were you?

13 A. I was sitting at a red light outside St. Paul's
14 Church on Columbia Road. I was sitting in the
15 cruiser at a red light outside of Saint Paul's
16 Church on the district two side of Columbia Road
17 at Hancock Street.

18 Q. And what drew your attention to the white
19 Taurus?

20 A. What drew my attention was the fact that it came
21 out of Hancock Street, and it should have pulled
22 behind me at the red light when in fact it
23 pulled up beside me and proceeded to go through
24 the red light.

1 Q. Who was operating the cruiser?

2 A. I was.

3 Q. And where was Officer Connolly sitting?

4 A. Beside me in the passenger seat.

5 Q. And did you or he say anything to each other at
6 the point that you made that observation of the
7 white Taurus?

8 A. I believe I said something to Officer Connolly.

9 Q. What did you say?

10 A. That he had just gone through the red light, and
11 I was going to pull him over, attempt to pull
12 him over.

13 Q. In connection with that, did you activate your
14 red light, your overhead light?

15 A. I did.

16 Q. And you proceeded to follow him?

17 A. I followed him.

18 Q. Now, when you followed him at the moment that he
19 went through the red light and you started to
20 follow him, were you able to make any
21 observations as to how many individuals were in
22 the vehicle?

23 A. I knew there were at least three or four people,
24 maybe more in the vehicle.

1 Q. And you made that observation right at the same
2 point that you started to follow him from the
3 red light?

4 A. Yes.

5 Q. Could you determine approximately how many were
6 in the back and how many were in the front?

7 A. No, I couldn't.

8 Q. Could you determine whether they were black or
9 white?

10 A. I couldn't.

11 Q. Do you know whether they were male or female?

12 A. I could not.

13 Q. As you followed them, which way did the vehicle
14 go and which way did you go?

15 A. The vehicle proceeded up Columbia Road. I was
16 right behind it. He made a motion like he was
17 pulling over at Bird Street and he took a right
18 onto Bird Street. At which point I thought he
19 was stopping. And then he took a sharp right
20 onto Virginia Street when I realized he wasn't
21 stopping.

22 Q. Throughout that period of time, did his speed
23 ever exceed 20 or 25 miles an hour?

24 MS. LITSAS: Objection.

1 like he was stopping at Magnolia Street and to
2 pass the car?

3 MS. LITSAS: Objection.

4 A. Approximately four blocks, five blocks.

5 Q. Then what happened?

6 A. He proceeded down Magnolia Street. I continued
7 to notify operations of our location when he
8 took a right onto Wayland Street.

9 Q. Okay, then what?

10 A. He still refused to stop. I still continued to
11 notify operations that he was refusing --

12 Q. Approximately how much time --

13 MS. LITSAS: Objection. Can you let
14 her finish the answer, Andrew?

15 Q. Approximately how much time had gone by from the
16 time you first began to follow him to this point
17 now where you're on Wayland Street and he still
18 hasn't stopped?

19 MS. LITSAS: Objection.

20 A. I don't know how much time. Not a long time.
21 Probably minutes, but it seemed like forever.

22 Q. Then what happened?

23 A. I continued down Wayland Street. I believe we
24 got to Howard Ave., he took a left towards

1 Quincy Street.

2 Q. Then what?

3 A. I continued to notify operations that he was
4 refusing to stop. He took a left onto Quincy
5 Street. Then he banged a right up onto Dunkeld
6 Street.

7 Q. At no point up until then were you aware of any
8 other police, were you aware of any other police
9 cruisers attempting to stop this man besides
10 you?

11 MS. LITSAS: Objection.

12 Q. To stop this person besides you?

13 A. No. I hadn't seen any cruisers up to this
14 point.

15 Q. Were you advised by headquarters that any other
16 cruisers were joining in the pursuit at all?

17 A. I had asked headquarters to notify district two
18 that we were on their district at the initial
19 onset of us going up Virginia Street, I believe.

20 Q. And at some point, did you turn onto Dunkeld
21 Street?

22 A. Yes.

23 Q. Was that a right or a left onto Dunkeld Street?

24 A. It was a right onto Dunkeld from Quincy.

1 crossing Fayston Street, where exactly was the
2 location of the vehicle that you were following?

3 A. In front of me.

4 Q. Could you, please, put a little box on the map
5 in the place where that vehicle was to the best
6 of your recollection when you first saw
7 Paillant?

8 A. Right there.

9 Q. And please label that V-1?

10 A. Okay.

11 Q. And as you approached Fayston Street, you
12 recollect whether you saw any dumpsters on
13 either the left-hand side or the right-hand side
14 of Dunkeld Street?

15 A. I don't recall any dumpsters.

16 Q. Do you recollect any vehicles at the corner or
17 at the intersection of Fayston and Dunkeld?

18 A. No, I don't recall.

19 Q. As you continued to follow the vehicle, did
20 Officer Paillant continue to move in the
21 direction he was starting to move in?

22 MS. LITSAS: Objection.

23 A. I don't know.

24 Q. Well, what were the next series of observations

1 that you made after you first saw Officer
2 Paillant walking as he was walking towards
3 Fayston?

4 A. My next observation was the vehicle turned onto
5 Fayston Street. The vehicle I was trying to
6 stop, the white car, he hit Officer Paillant.

7 Q. Wait, please. At the point that the vehicle
8 turned onto Fayston Street, okay, and hit
9 Officer Paillant, could you please put a circle
10 where Officer Paillant was?

11 A. I already have that circle.

12 Q. Where the vehicle struck him?

13 A. Right here. Which circle do you want me to put?
14 There's already a circle for Officer Paillant.

15 MS. LITSAS: It's a little difficult
16 because it's so small. It's not really an
17 accurate representation.

18 MR. STOCKWELL-ALPERT: Because it's
19 small.

20 MS. LITSAS: You're trying to put
21 everything in here. It's a very small, confined
22 location.

23 MR. STOCKWELL-ALPERT: Could you
24 please mark this Exhibit B?

1 the car after Paillant got shot. I said I
2 couldn't put it because I didn't know where he
3 was.

4 MR. STOCKWELL-ALPERT: Could you,
5 please, go back and find out what the first
6 questions were with regard to Exhibit F?

7 I want on the record every question so
8 that it's clear that she was asked a series of
9 questions and responded to those with regard to
10 the positioning immediately prior to the
11 shooting so that we have it clear as to what
12 went on before the break which became a 10- to
13 15-minute break, during which time she was out
14 in the hall talking to go other people about
15 this matter.

16 MS. LITSAS: Objection.

17 MR. STOCKWELL-ALPERT: I would like
18 you to read back the line of questions so it was
19 very clear what she was putting on that diagram.

20 (Questions and answers read back.)

21 Q. Now, on the same diagram that you already drew,
22 what you drew at the point immediately prior to
23 the first shot being fired, I would also like
24 you to draw the position of the white Taurus

1 night to your recollection?

2 A. I really don't know.

3 Q. Okay. And please describe the nature of any
4 further involvement that you had -- let's start
5 with after you regained visual contact with the
6 vehicle -- what's the next thing that happened?

7 A. I broadcast to operations that the vehicle was
8 on Quincy Street with the doors open and it was
9 rolling in the middle of the street, I believe.

10 Q. And then what happened?

11 A. My partner alighted from out of our department
12 vehicle, went after the people that were running
13 from the Taurus, and I ran up to the Taurus.

14 Q. And then?

15 A. Then I observed somebody in the back seat
16 slumped over.

17 Q. Did you go up to that person physically?

18 A. Yes, I did.

19 Q. And did you, were you able to determine whether
20 or not they were conscious at the time?

21 A. I believe the person was unconscious. I asked
22 for an ambulance.

23 Q. Could you tell whether they were still
24 breathing?

1 from what you observed that Officer Paillant's
2 life was threatened?

3 MS. LITSAS: Objection.

4 A. I'm sorry, say that question again.

5 Q. Was there anything about the way the vehicle
6 struck Officer Paillant or any of the
7 observations that you made that caused you to
8 think that Officer Paillant's life was in
9 danger?

10 MS. LITSAS: Objection.

11 A. Sure, the guy drove right at him.

12 Q. After the guy hit him and he fell down, okay,
13 was there anything further about the situation
14 that caused you to think that Officer Paillant's
15 life may be in danger?

16 A. Shots were being fired. I had no idea who was
17 firing them.

18 Q. So was it the shots that caused you to be
19 concerned for his life or was it the actions of
20 the motor vehicle?

21 MS. LITSAS: Objection.

22 A. What's the question? Was I more concerned his
23 life was in danger from the car or the guns or
24 the fires, the gunshots?

1 coming to a close.

2 MS. LITSAS: Okay.

3 (Recess.)

4 BY MR. STOCKWELL-ALPERT:

5 Q. Did you testify in this deposition that you lost
6 sight of Officer Paillant for some period of
7 time after the car struck him?

8 MS. LITSAS: Objection.

9 A. Yes, when he landed on the ground.

10 Q. Did you testify about how long you lost sight of
11 him for?

12 A. No. I don't believe I testified as to how long
13 I lost sight of him.

14 Q. So let me ask you, do you now have any
15 recollection as to how long you lost sight of
16 him for?

17 A. No.

18 Q. What was it, what was going on at the time that
19 caused you to lose sight of him?

20 MS. LITSAS: Objection.

21 A. What do you mean what was going on?

22 Q. What was going on that caused you to lose sight
23 of him?

24 MS. LITSAS: Objection.

EXHIBIT C

Volume: 1
Pages: 1 to 97
Exhibits: None

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 05-11803-MLW

SHENIA DANCY-STEWART as Administratrix
of the Estate of EVELINE BARROS-CEPEDA,
Plaintiff

vs.

THOMAS TAYLOR, JR., AND THE CITY OF
BOSTON,
Defendants

C O N F I D E N T I A L

DEPOSITION of ROBERT CONNOLLY,
a witness called on behalf of the
Plaintiff, pursuant to the applicable
provisions of the Massachusetts Rules of
Civil Procedure, before Judith R. Sidel,
Professional Court Reporter and Notary
Public, in and for the Commonwealth of
Massachusetts, at the Office of Andrew
Stockwell-Alpert, 11 Beacon Street, Suite
220, Boston, Massachusetts 02108, on
Friday, February 1, 2008, commencing at
1:55 p.m.

* * * *

WIDOMSKI REPORTING SERVICE
One Sunset Drive
Wakefield, Massachusetts 01880
(781) 246-0710

1 written materials that you just discussed
2 that you reviewed prior to coming here
3 today?

4 MS. LITSAS: Objection.

5 A. It was last night at my house.

6 Q. Did you also review them again this
7 morning, or some time after this morning?

8 A. Just this morning.

9 Q. Now, do you have a recollection as to
10 how -- strike that. On that particular
11 night, okay, of the incident, were you
12 in an unmarked cruiser?

13 A. Marked.

14 Q. What was your shift?

15 A. Midnight.

16 Q. To?

17 A. 7:30.

18 Q. Do you recollect what area you were
19 patrolling prior to this incident
20 occurring?

21 A. All of Dorchester.

22 Q. Are you assigned an area to patrol at
23 roll call when you come in?

24 A. Yes.

1 assigned different partners on a regular
2 basis, or you customarily have the same
3 partner?

4 A. You mostly have the same partner.

5 Q. Was Debra Flaherty mostly your partner
6 most of the time?

7 MS. LITSAS: Objection.

8 A. She was.

9 Q. Would there be occasions when you might
10 be manning a vehicle by yourself?

11 A. There were.

12 Q. But on this particular night Debra
13 Flaherty was your partner in the vehicle?

14 A. Yes.

15 Q. Who was driving?

16 A. She was.

17 Q. What drew your attention to the white
18 Taurus?

19 A. The way it came at us, and came beside
20 us.

21 Q. Where were you, if you recollect, when
22 you first became aware of the white
23 Taurus?

24 A. We were on Columbia Road at a red light.

1 Q. Now, Columbia Road at a red light, you
2 mean there was an intersection with the
3 other road. What was the other road that
4 it was at an intersection with?

5 MS. LITSAS: Objection.

6 A. Hancock Street.

7 Q. You say that when the vehicle came at
8 you, what do you mean by that?

9 A. As we were at the red light on Columbia
10 Road, we noticed the car come down
11 Hancock. It kind of made a crazy turn,
12 and then it turned back again, and it
13 came beside us.

14 Q. Could you be more specific about what you
15 mean by characterization of "crazy turn"?

16 A. We were at the red light on Columbia and
17 Hancock. The car came down Hancock,
18 started turning towards the right to go
19 the opposite direction of us, but then he
20 turned again towards the left and came
21 beside us.

22 Q. Was that the sum total of the activity of
23 the vehicle that drew your attention to
24 it at that point in time?

1 MS. LITSAS: Objection.

2 A. Then it went through the red light.

3 Q. I mean, at the red light up to that
4 point, that's what drew your attention
5 to the vehicle?

6 A. Yes, just the way he was turning, and
7 then came back at us.

8 Q. Now, you said it pulled up next to you?

9 A. Yes.

10 Q. On the left side of your vehicle, or the
11 right side of your vehicle?

12 A. On the left side.

13 Q. So that would mean that the right
14 passenger side of that vehicle was next
15 to the driver's side of your vehicle,
16 correct?

17 MS. LITSAS: Objection.

18 A. Yes, it was.

19 Q. Did it come to a stop at the red light?

20 A. It did.

21 Q. Then what happened?

22 A. Then it went through the red light.

23 Q. Now, up to that point did you perceive
24 any reason, based on the driving behavior

1 violation?

2 A. Civil.

3 Q. And what was your purpose in following
4 the vehicle after it went through the red
5 light?

6 A. To stop it, and give it a ticket.

7 Q. In connection with that, did your partner
8 activate the red light or the overhead
9 light?

10 A. They were already on.

11 Q. And why were they on prior to the vehicle
12 going through the red light?

13 A. Oh, I'm sorry. Right when they went
14 through the light, Debbie activated.

15 Q. What was the approximate rate of speed of
16 the vehicle as you were following it?

17 A. It was not that fast.

18 Q. And if I said facing on Dunkeld Street,
19 would the names of those streets mean
20 anything to you today, as we're sitting
21 here at this deposition?

22 MS. LITSAS: Objection.

23 A. Those streets I remember.

24 Q. As we sit here today, do you have any

1 knowledge or recollection as to where --
2 strike that -- as to what streets or
3 intersections the shooting occurred?

4 A. I do.

5 Q. What streets?

6 A. It was on Dunkeld and Fayston.

7 Q. And your partner and you in the vehicle
8 continued to follow the white Taurus for
9 some period of time, right?

10 A. We did.

11 Q. And would it be fair to say that you made
12 various turns along the way on different
13 streets?

14 A. We did.

15 Q. During the course of time that you
16 were following that vehicle, do you
17 recollect whether it turned onto Fayston
18 Street at some point?

19 A. It did.

20 Q. But prior to it turning onto Fayston
21 Street, do you recollect whether or not
22 it changed its rate of speed at all?

23 A. I don't recall.

24 Q. Well, do you recollect whether it went

1 A. Yes.

2 Q. And how close to the intersection of
3 Fayston and Dunkeld with respect to you
4 did that officer come?

5 A. He was right there at the corner.

6 Q. That would be with respect to you. It
7 would be the right corner, right?

8 A. Yes.

9 Q. Now, did you make any observation as to
10 whether or not there was any car parked
11 at the corner of Fayston -- at the corner
12 of Dunkeld, okay, where the officer was
13 moving towards?

14 A. I don't remember.

15 Q. As this was going on, how far behind the
16 white Taurus were you?

17 MS. LITSAS: Objection.

18 A. Still two- to three-car lengths.

19 Q. Were you able to maintain visual contact
20 with both officers throughout this series
21 of events up to this point?

22 MS. LITSAS: Objection.

23 A. I was fixed on watching the car hitting
24 the officer.

1 Q. What transpired -- what happened as the
2 car started to turn?

3 A. It hit the police officer.

4 Q. Now, how far into the actual turn onto
5 Fayston Street was the car before it
6 struck the officer?

7 A. It was like half and half.

8 Q. Half into Fayston and half in Dunkeld?

9 A. Yeah.

10 Q. And what exactly did you see happen?

11 Let's break this down. Did you see what
12 part of the vehicle hit what part of the
13 officer's body from where you were?

14 MS. LITSAS: Objection.

15 A. I did.

16 Q. Were you still two-car lengths or so
17 behind?

18 A. At this point when we saw the car going
19 towards the officer, Debbie had slowed
20 down even more and watched, and we were
21 kind of like watching what was going on.

22 Q. Why?

23 A. Because all of a sudden the officer went
24 up over the hood, and we didn't want to

1 going to stop.

2 Q. But you don't know what he realized.

3 MS. LITSAS: Objection.

4 A. I shouldn't say that.

5 Q. With respect to the time that you
6 observed, okay, how much time elapsed
7 from the time he put up his hands to the
8 time he actually started to move to the
9 right?

10 A. Seconds.

11 Q. And what part of the vehicle did you see
12 strike what part of the officer first?

13 MS. LITSAS: Objection.

14 A. The front part of the car, the fender
15 grill area hit the officer in his chest
16 and lower body.

17 Q. And did you see any other part of the
18 vehicle come in contact with the officer
19 after that?

20 A. Yes.

21 Q. What other part of the vehicle came
22 in contact with the other part of the
23 officer's body after that?

24 A. The hood. He went up onto the hood.

1 Q. Now, did he go up -- when he went up onto
2 the hood, what part of his body went up
3 onto what part of the hood?

4 A. The whole body went up.

5 Q. Did it go up -- if you want to divide the
6 car in half, okay, so you have got a left
7 half of the hood, and the right half of
8 the hood, okay, what part of the hood
9 did the officer's body go up on, the
10 right half or?

11 A. The right half.

12 Q. Okay. And what part of the right half?
13 Was it closer to, say, the headlight, or
14 was it closer to the center?

15 A. It was more like the whole right side of
16 the hood he went up over it.

17 Q. You mean over it. You mean he landed on
18 it, or he actually went flying over the
19 hood?

20 MS. LITSAS: Objection.

21 A. He got hit. He went up onto the hood.
22 The car is turning. As his car is
23 turning, he's on the hood, and then he
24 came off the hood onto the ground.

1 Q. I just have some follow-up questions.
2 Officer Connolly, why is it that you
3 didn't hear Officer Paillant on your
4 radio transmission on the night of
5 September 8th, 2002?

6 MR. STOCKWELL-ALPERT:

7 Objection.

8 A. Two different stations.

9 Q. Could you please explain what you mean by
10 that?

11 A. There are five districts, and every
12 district has their own radio station.

13 Q. So if Officer Paillant was transmitting
14 a radio transmission on his radio, would
15 you have been able to hear it on the
16 night of September 8th, 2002?

17 A. No.

18 Q. Why is that?

19 A. Because we were on a different station.

20 Q. What station was that?

21 A. We were on Channel 6.

22 Q. What channel was he on?

23 A. He's on Channel 3.

24 Q. At the point that you see a body exit out

EXHIBIT D

ORIGINAL

VOLUME I

PAGES: 1 - 73

EXHIBITS: 1 - 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11803-MLW

* * * * *

SHENIA DANCY-STEWART, as
Administratrix of the Estate
of EVELINE BARROS-CEPEDA,
Plaintiffs,

vs.

THOMAS TAYLOR, JR., and the
CITY OF BOSTON,
Defendants.

* * * * *

DEPOSITION OF CARLOS FERNANDES,
taken on behalf of the Defendants, pursuant
to the Massachusetts Rules of Civil
Procedure, before Karen Borreson, RPR, Notary
Public within and for the Commonwealth of
Massachusetts, at the law offices of City of
Boston, City Hall, Boston, Massachusetts, on
Thursday, February 21, 2008, commencing at
2:35 p.m.

1 Q. Is he any relation to Dimingas DePina?

2 A. Dimingas, no.

3 Q. How do you spell DePina, D-E-P --

4 A. D-E-P-I-N-A.

5 Q. Do you have any plans on moving, Mr.
6 Fernandes?

7 A. Nope.

8 Q. Do you have any intention on moving to
9 Tennessee?

10 A. No.

11 Q. Do you have any intention on moving at any
12 time in the next 12 months?

13 A. Nope.

14 Q. Have you always lived in Massachusetts?

15 A. Yes, I have.

16 Q. At the time of the incident on September 8,
17 2003, where were you living?

18 A. I'm not sure. I can't remember. I don't
19 know.

20 Q. Do you have a Social Security --

21 A. I don't have a stable living area. I've
22 been around a lot like -- like, I bounce
23 from lots of places.

24 Q. Is there a reason why you don't have a

2nd Day Carlos Fernandes

74

1 VOLUME II
2 PAGES 74 TO 137
3 EXHIBITS: SEE INDEX
4
5 UNITED STATES DISTRICT COURT
6 DISTRICT OF MASSACHUSETTS
7
8 C.A. NO. 05-11803MLW
9
10 SHENIA DANCY-STEWART, as)
11 Administratrix of the)
12 Estate of EVELINE)
13 BARROS-CEPEDA,)
14 Plaintiff,)
15
16 vs.)
17
18 THOMAS TAYLOR, JR., and)
19 the CITY OF BOSTON,)
20 Defendants.)
21
22
23
24

14 CONTINUED DEPOSITION OF CARLOS FERNANDES,
15 a witness called on behalf of the Defendants,
16 pursuant to the Federal Rules of Civil Procedure
17 before Lisa Abdo, Certified Shorthand Reporter and
18 Notary Public in and for the Commonwealth of
19 Massachusetts, at the offices of City of Boston Law
20 Department, City Hall, Room 615, Boston,
21 Massachusetts, on Tuesday, May 13, 2008, commencing
22 at 11:28 a.m.
23
24

□

75

1 APPEARANCES:
2

10 2nd Day Carlos Fernandes
11 passed away until the -- until he came and
12 told me. We didn't know none of that
13 happened until the next following day, the
14 following day.
15 Q. There were shots fired at two different locations
16 that night, correct?
17 A. Yeah.
18 Q. There were shots fired at Cushing Ave., correct?
19 A. Yes.
20 Q. And there were shots fired on Dunkeld Street,
21 correct?
22 A. Yes.
23 Q. And prior to arriving at Dunkeld Street, you were
24 previously -- all of you in the vehicle were at
 Cushing Ave., correct?

90

1 A. Yes.
2 Q. And based on your testimony on the first day of
3 your deposition, February 21, 2008, the people in
4 the vehicle that night on September 8, 2002 were
5 yourself, Brima Wurie, Maria DaRosa, Luis
6 Carvalho -- is that everybody? -- and Eveline
7 Barros-Cepeda?
8 A. Yes.
9 Q. Was there anybody else in the car?
10 A. No.
11 Q. And you were sitting in the front passenger's seat?
12 A. Yes, I was.
13 Q. And Brima Wurie was driving?
14 A. Yes, he was.

2nd Day Carlos Fernandes

- 15 Q. And what was the purpose in going to Cushing Ave.
16 that night on September 8, 2002?
17 A. We was just driving through. We probably
18 just driving by. We had no reason to be
19 going there.
20 Q. Did you stop at Cushing Avenue at any point?
21 A. Yes, we did.
22 Q. And what did you do -- who was driving at that
23 point?
24 A. Brima Wurie.

91

- 1 Q. And where were you sitting?
2 A. I was in the front passenger.
3 Q. Okay. Please keep your voice up.
4 A. Okay.
5 Q. Who was in the back seat behind the driver's side?
6 A. The driver's side? I don't know which -- I
7 don't know which one. I just know Eveline
8 was in the middle. It could have either been
9 Yito's seat or Lenny. I'm not too sure.
10 Q. And just so that the record is clear, Yito is Luis
11 Carvalho?
12 A. Yes, Luis Carvalho.
13 Q. And Maria DaRosa is Lenny?
14 A. Yeah.
15 Q. Now, did you have a nickname?
16 A. No.
17 Q. And Brima Wurie had a nickname; it's B.J., correct?
18 A. Yes.
19 Q. Did he have any other nicknames?

2nd Day Carlos Fernandes

9 chased him.

10 Q. what were you doing that got you guys in trouble?

11 A. We got pulled over and he just took off. I

12 have no idea what we did. They just

13 handcuffed me and I went to court.

14 Q. Were you charged with anything?

15 A. What was I charged with? I don't remember

16 what I was charged with. I think I was just

17 charged with resisting arrest.

18 Q. Were you then ultimately convicted, or were the

19 charges dismissed?

20 A. I think I plea bargained because I was on

21 probation or something. So I ended up taking

22 a plea bargain, I believe. I'm not too sure.

23 There's a lot of cases.

24 Q. There's been a lot of cases. I understand. Let's

96

1 turn back to the Cushing Ave. incident. So at some

2 point you arrived at Cushing Avenue, correct?

3 A. Yes.

4 Q. On September 8th?

5 A. Yes.

6 Q. And what do you do there when you get there?

7 A. We was driving by and we thought we

8 recognized somebody we knew. So we just

9 pulled over to say "Hi" to some dude. And

10 then as soon as we pulled over, I get to step

11 out the car, we heard gunshots. That's when

12 I got back in the car and we just took off.

13 Q. Did anyone else get out of the car at that same

2nd Day Carlos Fernandes

14 time at Cushing Ave.?

15 A. I'm not sure. I just opened the door. As
16 soon as I heard gunshots, I dove back in.

17 Q. Were you actually out of the car?

18 A. I just opened the door and took a step out.
19 I didn't really actually -- I don't believe I
20 got out the car completely. Just as I was
21 stepping out. I don't know if they
22 thought -- I don't know if they were shooting
23 at us or somebody else was shooting. I
24 didn't know what was going on. I just heard

97

1 gunshots, got back in the car, and we took
2 off.

3 Q. Now, did you have a gun with you at Cushing Ave.?

4 A. No, I didn't.

5 Q. Did anyone else have a gun in the car?

6 A. No, they didn't.

7 Q. Did you participate in any shooting at Cushing
8 Ave.?

9 A. No, I didn't.

10 Q. So you step out of the car and you hear shooting.
11 Where are the shots coming from?

12 A. I didn't see all that. I just got back in
13 the car to get out of there.

14 Q. And where is the guy that you recognize and say
15 hello to?

16 A. We pulled over. I don't know. Everybody
17 just scattered. As soon as I was about to
18 get out, we heard a shot and everybody just

2nd Day Carlos Fernandes

19 scattered.

20 Q. And what happened to that guy that you saw that you
21 recognized? He scattered, too?

22 A. Yeah, I guess. As soon as -- I just
23 turned -- was just about to step out. I
24 didn't really -- I lost sight. Because he

98

1 pulled over for me to get out. I had to turn
2 around because he was behind us. As soon as
3 I even opened the door to get out, there were
4 gunshots as I came out. So I just got back
5 in the car.

6 Q. And where on Cushing Ave. did you get out?

7 A. It was a left. I'm not sure what's the name
8 of the street. It was right -- as soon as we
9 pulled over, we pulled over on the left, and
10 it was right on the corner right there.

11 Q. Was there a house that was nearby?

12 A. At the top of the turn. I forget the name of
13 that street. I think it's -- there's a
14 corner store at the end of that street that
15 I know you come up to go to Cushing. But I'm
16 not sure of the name of the street. I know
17 it's the second turn over there.

18 Q. Did you know anybody on Cushing Avenue at that
19 time?

20 A. Yeah. I've got a couple of cousins that hang
21 around there, a couple of people.

22 Q. And what are their names?

23 A. Freddie.

2nd Day Carlos Fernandes
12 point where we was leaving Angela's, B.J. was
13 driving. I'm not sure if he was driving the
14 whole way or if they switched. I can't
15 remember that.
16 Q. At some point you arrive at Cushing Ave. because
17 you see somebody you know and you hear shots fired?
18 A. Yes.
19 Q. You're getting out the car at the time you hear
20 shots fired, correct?
21 A. Yes.
22 Q. And then you get back in the car?
23 A. Yes.
24 Q. And then you -- B.J. starts driving away, correct?

103

1 A. Yes.
2 Q. And where are you going at that point?
3 A. I think we took a right -- we took a right
4 onto Hancock, and then we was taking a left
5 back up onto Columbia Road.
6 Q. And at any point do you see any police cruiser?
7 A. As soon as we took that right.
8 Q. From where?
9 A. From Hancock to Columbia Road.
10 Q. And then what happens after that?
11 A. As soon as we took that right, they just came
12 right behind us.
13 Q. Was there a red light or a green light?
14 A. I think it was a red light.
15 Q. So B.J. went through the red light?
16 A. I'm not sure. I'm not sure if it was red or

2nd Day Carlos Fernandes

17 green. It's one of them lights that they
18 just switched on Columbia Road. It's funny.
19 I can't explain it. If you go there, you'll
20 understand what I'm saying. I can't explain.
21 I don't know. I don't know if it was green
22 or red.
23 Q. Was there a discussion in the car about whether it
24 was a red light or a green light?

104

1 A. Was there? I can't remember. I can't
2 remember that.
3 Q. So you can't remember if anyone said "Is that a red
4 light or a green light?" "B.J., you just went
5 through a red light" or anything like that?
6 A. It's a long time. I can't really remember
7 the details if somebody said it or not.
8 Somebody could have said it. I'm not sure.
9 Q. So what happens after you -- do you look back and
10 see the police cruiser?
11 A. Yes.
12 Q. And do you see who's driving the police cruiser?
13 A. No, I don't.
14 Q. It's a marked cruiser, blue and white?
15 A. Yeah, a blue and white.
16 Q. And what does B.J. do? Does he stop?
17 A. He just kept driving.
18 Q. And do you say anything to him about why he keeps
19 driving?
20 A. Did I? I don't know. I don't remember. I
21 don't think I said anything to him.

2nd Day Carlos Fernandes

22 Q. Does anyone else in the car say anything to him
23 about why he keeps driving and doesn't stop for the
24 police?

105

1 A. I think I might have heard people saying
2 something. But there was just a lot of
3 commotion. So I really don't know what --
4 there was a lot of people. There was five
5 people in the car. I can't really pinpoint
6 right now who said what or did somebody say
7 that. There was just a lot of commotion
8 going on. We just got shot at, the police,
9 he doesn't want to stop. So there's a lot of
10 commotion. So I really can't pinpoint what
11 was said by each person, who said what.

12 Q. So after you leave Cushing Avenue, you guys wanted
13 to get out of there because you had just been shot
14 at, correct?

15 A. Yes.

16 Q. So B.J. is driving to get away from Cushing Ave.,
17 correct?

18 A. Yes.

19 Q. And then he goes through what possibly could be a
20 red light?

21 A. Yes.

22 Q. And the police cruiser follows you?

23 A. Yes.

24 Q. And it's possible that the police may think that

106

2nd Day Carlos Fernandes

- 6 out of there, you couldn't get out of there.
- 7 Q. Because the car didn't drive that fast?
- 8 A. Yeah, yeah.
- 9 Q. And what kind of car again was it?
- 10 A. I just know it was old. I'm not sure.
- 11 Q. It was a Taurus?
- 12 A. Yeah, a Taurus.
- 13 Q. A white Taurus?
- 14 A. Yeah, it could have been.
- 15 Q. And at all points that night you were sitting in
- 16 the front seat?
- 17 A. Yes.
- 18 Q. And so you are in the car while the police follow
- 19 you. And at any point does the car -- the car
- 20 you're driving in stop?
- 21 A. No.
- 22 Q. And do you know why?
- 23 A. I'm not sure. You'd have to ask B.J. that.
- 24 Q. You don't why you don't stop for the police?

108

- 1 A. I didn't have an option. I was in the
- 2 passenger's seat. You'll have to ask him
- 3 that. I'm not sure.
- 4 Q. Did you ask B.J. to stop the car at any point?
- 5 A. Yeah, I think I did. I think I did. I think
- 6 he didn't have his license or something like
- 7 that. And he was on parole or something,
- 8 something dumb.
- 9 Q. So B.J. was driving the car without a license and
- 10 he was on parole and so that's why he didn't want

2nd Day Carlos Fernandes

- 11 to stop?
- 12 A. I believe so.
- 13 Q. And at some point you reached Dunkeld Street,
- 14 correct?
- 15 A. Yes.
- 16 Q. At any point prior to reaching Dunkeld Street, does
- 17 B.J. stop the car for the police?
- 18 A. No.
- 19 Q. And is there any other car -- is there any time
- 20 that the car you're driving in slows down?
- 21 A. Yeah, when we was coming to the top of
- 22 Dunkeld, a Boston police officer I guess was
- 23 already up there. He seen us coming up. And
- 24 the other cruiser was still behind us.

109

- 1 Q. And did the cruiser have lights and sirens on at
- 2 that time?
- 3 A. Yes, it did.
- 4 Q. So the cruiser had lights and sirens on the whole
- 5 time that you were traveling in the car from the
- 6 point of the red light or the green light to
- 7 Dunkeld Street, correct?
- 8 A. Yeah, I believe so. It was steadily behind
- 9 us.
- 10 Q. It was steadily behind you?
- 11 A. Yeah.
- 12 Q. And what do you see when you are driving up Dunkeld
- 13 Street?
- 14 A. I see a cruiser at the top, and then I seen a
- 15 cop running to the front of the car we was in

2nd Day Carlos Fernandes

16 with his gun drawn.

17 Q. And what is he doing?

18 A. I think he was yelling to stop or pull over

19 or something like that. I couldn't really

20 hear him.

21 Q. Is he raising his hands up in the air?

22 A. He had the gun pointed at the windshield.

23 Q. At any point does he put his hands up like this

24 where he -- where you're putting your open-faced

110

1 palms in your direction?

2 A. So I can see his palm?

3 Q. Yes.

4 A. No. All I seen was the gun.

5 Q. And when is the first time that you see him? Where
6 are you?

7 A. Maybe a little bit past coming up the street.

8 Maybe a little bit less than halfway maybe

9 from Dunkeld that I seen him.

10 Q. And did you say anything when you see him?

11 A. Yeah, "The police."

12 Q. And who do you say that to?

13 A. Probably B.J., the people in the car.

14 Q. And did the people in the car say anything to you?

15 A. I don't know. Probably a whole lot of
16 commotion going on. I can't really...

17 Q. I don't want you to guess. If you remember.

18 A. Oh, no, I can't. I can't remember.

19 Q. And what happens when you see the police officer
20 draw his gun?

2nd Day Carlos Fernandes

- 21 A. He just kept coming forward towards the car,
22 so I kind of ducked down a little bit.
23 Q. And what happens next?
24 A. I guess B.J. kept going. He wasn't stopping.

111

- 1 So I kind of ducked down because I didn't
2 know if he was going to shoot or not. So I
3 kind of ducked a little bit. But I could
4 kind of see a little bit off my other eye.
5 And I see him coming across from the other
6 side because I was on the passenger's side.
7 So I could see him coming across the front of
8 the vehicle because he was coming towards my
9 side. And then as we was driving by, I was
10 looking out the side of the window, the side
11 of the car. And I just seen him dive. He
12 dove over. And then after that, we just took
13 that right, kept going a little bit. Then I
14 looked back. I seen the other cop on his
15 knees with his gun pointed at us. And he
16 just started shooting. And after that, we
17 just took that right. And everybody -- I
18 thought people -- I didn't know. I just
19 hopped out. I just ran.
20 Q. So what happens -- after you see one police officer
21 dive, what happens next after that?
22 A. We kept going. We took a right because
23 there's only one way. You can only just take
24 a right. It's a sharp, sharp right. It's

2nd Day Carlos Fernandes

112

1 like a dead end. You have to really like
2 (demonstrating), I'm saying. As soon as we
3 took that right, I kind of looked back in the
4 rearview a little bit. And I seen the
5 officer on his knees. But this is when we
6 kind of got up the street a little bit. And
7 then he just started shooting.

8 Q. And you saw him in the rearview mirror on your
9 passenger's side?

10 A. Yes.

11 Q. And do you see what he looked like?

12 A. No. It was too far and it was dark.

13 Q. And was it a Caucasian or an African American or a
14 Hispanic officer?

15 A. I don't even know. It was too dark. I just
16 seen the uniform.

17 Q. A Boston police uniform?

18 A. Yeah.

19 Q. Do you know if it was the same police officer that
20 you saw in front of the car?

21 A. I don't know. It happened too fast. I can't
22 really -- I don't think it was him. I don't
23 think he moved from there to there. I don't
24 think it was him. But I don't know.

113

1 Q. You don't know?

2 A. I can't answer that. I don't know.

3 Q. And so what happens after you look in the rearview

2nd Day Carlos Fernandes

24 A. All right.

118

1 Q. But the distance was sufficient enough that you
2 could not identify if it was an African American
3 officer or any other ethnicity?

4 A. It was too dark.

5 Q. How do you know he was firing the shots?

6 A. I seen the uniform.

7 Q. Did you actually see the shots fired? Did you see
8 the gun?

9 A. Yeah, I seen the gun. Yeah, I seen the gun
10 drawn. When he was shooting, I might have
11 seen like the first couple -- you know how
12 you see the fire coming out? I seen sparks.
13 That's when I ducked.

14 Q. And so what happens after that? That's when you
15 exit the car?

16 A. Yeah. I exited the car at Quincy. We took
17 that right first. And then when I got to the
18 end of Quincy, I hopped out.

19 Q. Do any of the shots you hear hit the car that you
20 know of?

21 A. Do I remember hearing them?

22 Q. Yes.

23 A. I'm not sure. There was a lot of commotion.

24 I don't know if it hit the car. I think I

119

1 heard glass break.

2 Q. And where was the glass breaking?

2nd Day Carlos Fernandes

23 Q. Did you see anybody else in the area on Dunkeld
24 Street at the time that you were traveling up

124

1 Dunkeld Street?

2 A. It was crowded outside because something had
3 happened because the police was already at
4 the scene, so there was people already
5 outside.

6 Q. And do you know how many people?

7 A. Oh, no, I don't know.

8 Q. You would be guessing?

9 A. Yeah.

10 Q. At any point did you see the car hit the police
11 officer that was pointing his gun in your car?

12 A. I don't believe we hit him. He dove. I seen
13 him kind of like dive. But I can't say. We
14 might have hit his leg or something. But I
15 just seen like the front of his body like
16 dive towards the floor. So I can't actually
17 tell you if we hit him or not.

18 Q. It's possible that you could have hit him?

19 A. We could have but I believe we didn't.

20 Q. And why do you believe that you didn't?

21 A. Because I seen him kind of dive, so I'm
22 figuring he dove on the sidewalk.

23 Q. Are you aware that Brima Wurie plead guilty to
24 assault and battery with a dangerous weapon with

125

1 2nd Day Carlos Fernandes
2 respect to the incident of hitting the police
3 officer with the vehicle?

4 MR. DE MIRANDA: Objection.

5 A. No, not until you told me last time I was
6 here. You asked me the question.

7 Q. Do you know what the officer looked like that was
8 pointing the gun when you were traveling up Dunkeld
9 Street?

10 A. No, I don't remember that.

11 Q. You don't know if he was Caucasian or African
12 American?

13 A. I just remember the blue suits.

14 Q. He wearing a police uniform?

15 A. Uniform, yes.

16 Q. Do you know what B.J. did when shots were fired?

17 A. What do you mean?

18 Q. Did you see B.J. do anything when the shots were
19 fired?

20 A. No. I just know we took a right because we
21 went down that street. I was ducking. We
22 took a right and I hopped out.

23 Q. Did you speak to any police officers -- strike
24 that.

 Following the incident, were you injured

126

1 in any way?

2 A. No.

3 Q. Do you know if anyone else was injured as a result
4 of the incident?

5 A. Yeah. I think Lenny -- I think something had

2nd Day Carlos Fernandes
21 doesn't include any reference to you seeing a
22 police officer shooting from the passenger's side
23 view mirror, correct?
24 A. I don't see it in there, no.

130

1 Q. And the reason that you didn't say that is because
2 you didn't want to get into it?
3 A. I didn't say it. I don't know why I didn't
4 say it.
5 Q. Is that something that you remember now --
6 A. Yeah, I remember now.
7 Q. -- that maybe you didn't remember then?
8 A. Maybe. I definitely remember it, though.
9 Q. So your memory is better now than it was back in
10 October 2, 2002?
11 A. No. I just don't know why I didn't state --
12 at this particular moment, I don't know why I
13 didn't state that. I'm not sure.
14 Q. You would agree with me that would be pretty
15 important to tell them that, correct?
16 A. Yeah. But I probably just gave them a quick
17 rundown of what really happened. I probably
18 didn't get in so much detail with them.
19 Q. So is it your testimony, Mr. Fernandes, that you
20 didn't see -- that you saw the officer dive in
21 front of the car, correct?
22 A. Yeah.
23 Q. And dive towards the direction of your passenger
24 side, correct?

EXHIBIT E

ORIGINAL

VOLUME I

PAGES: 1 - 15

EXHIBITS: NONE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11803-MLW

* * * * *

SHENIA DANCY-STEWART, as
Administratrix of the Estate
of EVELINE BARROS-CEPEDA,
Plaintiffs,

VS.

THOMAS TAYLOR, JR., and the
CITY OF BOSTON,
Defendants.

* * * * *

DEPOSITION OF BRIMA WURIE, taken
on behalf of the Defendants, pursuant to the
Massachusetts Rules of Civil Procedure,
before Karen Borreson, RPR, Notary Public
within and for the Commonwealth of
Massachusetts, at the Nashua Street Jail, 200
Nashua Street, Boston, Massachusetts, on
Friday, January 18, 2008, commencing at 12:35
p.m.

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VOLUME II

PAGES: 16 - 262

EXHIBITS: 1 - 2

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DISTRICT OF MASSACHUSETTS

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* * * * *

ORIGINAL

DEPOSITION OF BRIMA WURIE, taken
on behalf of the Defendants, pursuant to the
Massachusetts Rules of Civil Procedure,
before Karen Borreson, RPR, Notary Public
within and for the Commonwealth of
Massachusetts, at the Nashua Street Jail, 200
Nashua Street, Boston, Massachusetts, on
Friday, January 25, 2008, commencing at 11:45
a.m.

1 Q. Did you at any point know whose care it was?

2 A. No. Me? Did I know whose car it was? No,
3 not that I recall.

4 Q. Do you remember who was driving when you got
5 to Hancock Street?

6 A. I think -- I think I could have been driving
7 or -- I don't remember. I think either I
8 was driving or -- because I know Lenny
9 wasn't feeling good. She had to go to the
10 bathroom or something. That's all I
11 remember.

12 Q. When did you start driving?

13 A. From that point on.

14 Q. From Hancock on?

15 A. I think so. That's what I'm saying, I can't
16 recall. Like, this is, like, six years go.

17 Q. I understand.

18 A. I don't know if I was driving before. I
19 don't know if I -- I don't know if I drove
20 to Hancock or not. I could have. That's
21 what I mean, I really don't remember.

22 Q. Do you remember driving away from Hancock
23 though?

24 A. Yes.

1 Q. Do you recall where you were incarcerated?

2 A. South Bay.

3 Q. Were you on --

4 A. I was out on parole, yes.

5 Q. Were you on parole on that date?

6 A. I think so, yes.

7 Q. And your license was suspended as of that
8 date?

9 A. Yep.

10 Q. Were you concerned about that when you
11 started driving the car?

12 A. I wasn't really concerned until...

13 Q. Later?

14 A. Yes. Later, but...

15 Q. Then it became a concern.

16 What was the plan to do that night?

17 Where were you going?

18 A. We were just hanging out. We were just
19 going to go out -- just -- just have fun,
20 just relax.

21 Q. Where is Goodtimes?

22 A. I think Somerville. I would say Somerville.

23 Q. Did you have a plan to as where you were
24 going to when you left Hancock?

1 vehicle had any drugs?

2 A. No.

3 Q. Fair to say that night you were on parole
4 and you didn't have a license?

5 A. Uh-huh.

6 Q. You pled guilty to that charge of operating
7 a vehicle without a license?

8 A. Yes.

9 Q. Did you know if anyone in the vehicle had a
10 firearm?

11 A. No.

12 Q. Do you remember where everybody was seated
13 in the vehicle? And I guess I'm saying when
14 you leave Hancock, where is everybody
15 seated?

16 A. I can't recall.

17 Q. Were you in the driver's seat?

18 A. Yes.

19 Q. Who was in the passenger seat?

20 A. I think -- I think Carlos was.

21 Q. Carlos Fernandez?

22 A. Yes.

23 Q. Who was in the back seat?

24 A. I don't know the order.

1 Q. Who total was in the back seat?

2 A. Angela, Lenny and Luis.

3 Q. Do you remember who was sitting behind you?

4 A. Uh-uh.

5 Q. Do you remember who was sitting in the
6 middle?

7 A. I don't -- like, I don't recall the order.

8 Q. Do you remember where you were sitting in
9 the car before you started driving?

10 A. No. That's the thing, I think from that
11 point -- from when I was driving, I don't
12 remember if I was not driving. I might have
13 been in the -- I think I was in the back
14 probably. Yes, I think I was sitting in the
15 back.

16 Q. Do you remember what part of the back seat?

17 A. Behind the driver, because I think Lenny was
18 driving first. Yes. Like, it was weird. I
19 don't -- I can't recall, but I remember I
20 was sitting in the back at one time before
21 Hancock. I don't know. It was just a while
22 ago. I really don't know.

23 Q. Did you go to Speedwell Street that night at
24 all while you had the car?

1 A. No.

2 Q. Do you remember the next time you stopped
3 the vehicle after you left Hancock?

4 A. Not until the tragedy, no.

5 Q. Did Carlos Fernandez have any beef with
6 anybody from earlier that day?

7 A. No. He was at a cookout. I didn't see him.

8 Q. Did he have any beef at the cookout with
9 anybody that you were at?

10 A. No.

11 Q. Any problems at any of those cookouts?

12 A. No.

13 Q. Did Carlos Fernandez have any problems with
14 anybody up around Cushing Avenue?

15 A. Not that I know of, no.

16 Q. Did you ever get out of the car around
17 Cushing Avenue?

18 A. No. I never got out of the car. That's why
19 I said, I really don't want to get into
20 details with this. Because there's lot in
21 this case that is -- is like cohorsed
22 criminally. Because like -- like Dan Keller
23 played a big part in a lot of this case that
24 I really don't want to get into details

1 that my lawyer could advise me going forward
2 with this deposition.

3 Q. My question is: At some point did you see
4 the police on Columbia Road?

5 A. Yes.

6 Q. Were you driving the car, the Ford Taurus,
7 when you saw the police?

8 A. Yes.

9 Q. Where were the police?

10 A. Behind me.

11 Q. Were they in a vehicle, too?

12 A. Yes.

13 Q. What kind? Was it a cruiser?

14 A. I seen flashing lights, so...

15 Q. Were you able to tell, other than the
16 lights, if it was a police vehicle, a police
17 cruiser, like a marked cruiser?

18 A. I think so, yes.

19 Q. I think you had indicated earlier that one
20 of the charges that you had intended to plea
21 guilty to was failure to stop.

22 A. Yes.

23 Q. When did you fail to stop? Was that on
24 Columbia Road?

1 A. It could have been.

2 Q. Where were you when you saw the lights? You
3 saw the police lights?

4 A. Yes.

5 Q. And by that do you mean the red and blue
6 wigwags?

7 A. Activation.

8 Q. Did you hear any sirens?

9 A. No.

10 Q. Did you hear anything?

11 A. I never heard sirens, no. Not that I
12 recall, no. It was just flashing lights
13 there. I never heard no -- noise, not that
14 I recall.

15 Q. Did you understand that they were trying to
16 pull you over?

17 A. I mean, yes. I know common-sense-wise. But
18 they really didn't use no speaker and say,
19 Pull over. And I didn't hear no sirens.
20 But they are following, yes.

21 Q. Do you know why they were following you?

22 A. No.

23 Q. Do you know why they were trying to pull you
24 over?

1 it was green?

2 A. Which set of lights?

3 Q. The one on Columbia Road --

4 A. It was green.

5 Q. -- after you had already taken the left?

6 A. Yes, it was green.

7 Q. So I may have already asked you this, but

8 I'm not sure I understand what you're

9 saying. When did you first notice the

10 police?

11 A. I noticed the lights, but I was taking a

12 right. I didn't know if they were

13 activating me or not.

14 Q. Did you see the police car before they

15 activated their lights?

16 A. Yes. They were at the lights. Like, they

17 was at the intersection at the right,

18 stopped at their light. That's what I mean.

19 When I got to Hancock, the police was

20 stopped because their light was red.

21 Q. Were they on the same side of the street as

22 you?

23 A. All right, if you -- if you're on Columbia

24 Road, there is an inbound and an outbound.

1 with common sense, did you realize that they
2 were trying to pull you over?

3 A. Yes. The lights was flashing.

4 Q. Did you pull over at that time?

5 A. No.

6 Q. Why weren't you pulling over?

7 A. Because of my license was suspended and I
8 just came home from prison and I...

9 Q. What did you think would happen if you were
10 pulled over?

11 A. Going to jail.

12 Q. How long had you been out of jail?

13 A. Not even a month.

14 Q. I think before it seemed as though you knew
15 it exactly?

16 A. Like three weeks. Well, I calculated it
17 before. It was an embarrassment to me.
18 Because I was -- like, I was only home for,
19 like, three weeks and four days. I would
20 never forget that because it was like I was
21 home an extremely short period of time. It
22 was, like, an embarrassment to my family.

23 Q. Do you remember what road you turned onto
24 next?

1 A. I don't know the roads. Like, I can't
2 remember.

3 Q. Do you remember what direction you turned
4 next?

5 A. Uh-uh.

6 Q. Were you going anywhere in particular at
7 this point?

8 A. No.

9 Q. What was your intention when you were
10 driving on these streets?

11 A. Well, my mental state was, I don't know, get
12 away from the police because they was
13 following me.

14 Q. At some point did you see any other police
15 officers?

16 A. Yes.

17 Q. When did you see another police officer?

18 A. Like, the street was Dunkeld.

19 Q. Are you familiar with that area?

20 A. I mean, not really. I never, like, been
21 around there. I don't know nobody that
22 lives around there or nothing, but...

23 Q. Do you know where Dunkeld Street, Fayston
24 Street and Perth Street are?

1 know if there was a car there. It's -- it's
2 -- it's a while ago. I don't know if there
3 was -- I think there was a car on Dunkeld.

4 Q. What kind of car, a police car?

5 A. No. I'm not sure. About -- I don't think
6 it went out of the way. But then I remember
7 the police coming in the middle of the
8 street like, Hey, waving his hand.

9 Then -- like, I can't recall if the
10 car was -- I don't know if there was a car
11 in the middle of the street or not, but I --
12 to my recollection, I think there was a car
13 in the middle of the street that vanished,
14 that ended up driving away once they seen the
15 car coming up with the flashing lights
16 behind it. I think that car disappeared
17 somewhere.

18 And then there was the police that
19 came in the street and waving his right hand
20 and pointing a gun at me. That's what I
21 remember. And talking about stop. I slowed
22 up to, like, a stop and he went to the right
23 of the car. He moved to the right of the
24 car.

1 Where did you first notice that
2 there was this car in front of you?

3 A. As soon as I came on Dunkeld, because I
4 slowed up.

5 Q. Was that car in front of you while you were
6 on the street?

7 A. There was no car -- there was no car in
8 front of me. And when -- all I remember is
9 traffic was coming. I came into traffic and
10 the cop wasn't right behind me. And I went
11 onto Dunkeld and the cop eventually came up
12 behind me.

13 And then the car in front of me left
14 and the police came in the middle of the
15 street and was pointing a gun at me and
16 talking about stop. And I slowly kept on
17 going. And, like, I was moving to the side
18 slowing of the -- closer to the left side of
19 the car, trying not to hit of car.

20 And the police walked out of the
21 way, because he was not going to get hit.
22 He walked out of the way and he was pointing
23 the gun at the car. And I remember he was
24 slapping the hood with his hand like, stop

1 the car.

2 Q. When did you first see that police officer
3 in the street?

4 A. When -- basically when that other car -- I
5 think he was -- he was -- I don't know if he
6 was in the middle of the street or in
7 between two cars, but that car -- from the
8 time that car that was in front of me that
9 left or whatever, there was an officer that
10 just came in the middle of the street
11 pointing the gun. Like, he was there -- I
12 think he was there the whole time when I
13 seen him.

14 As a matter of fact, as soon as I
15 turned onto Dunkeld, he was there in the
16 middle of the street. And the car was
17 behind him that drove off, I guess. And
18 then he was pointing his gun.

19 Q. How do you know he was a police officer?

20 A. He was in plain clothes.

21 Q. He was in --

22 A. I mean, he was in his uniform, I would say.

23 Q. He was wearing a police uniform?

24 A. Yes.

1 see what you're doing.

2 Are you extending your arm forward?

3 A. He, like, extended his arm in front of his
4 body, like, waving with the gun. He had the
5 other gun -- he had a gun in one hand and
6 his hand free with the other hand like
7 basically signaling to stop.

8 Q. And am I reflecting this accurately, you put
9 your arm out straight with your elbow locked
10 and your palm is open and palm facing away
11 from you?

12 A. Something to that effect, yes.

13 Q. The international sign for stop? You know
14 what I mean by that?

15 A. Yes, yes.

16 Q. So he indicated to you to stop the vehicle?

17 A. Yes.

18 Q. How far from him were you when you saw him
19 doing that?

20 A. It was, like, two cars. But then I was just
21 driving, like, two, three, four -- like,
22 rolling material. Like, the car was just
23 rolling forward. And he seen that the car
24 wasn't coming to a complete stop, so he went

1 with his free hand, which would be his left.

2 Q. When did you lose sight of that officer?

3 A. After he slapped the hood of the car and
4 then he had his gun still pointing at me --
5 like, I was looking over to the right, that
6 was it. And then -- like, then I made it to
7 Fayston and took a right.

8 Q. And he was on the passenger side?

9 A. Yes.

10 Q. When he was in the street signaling you to
11 stop, where is he on the street? Is he in
12 the middle, to the side?

13 A. Like, before the car got close to him, he
14 was, like, in the -- like, not in a frenzy,
15 but, like, urging you to stop. Like, his
16 body was moving like, Stop the car, Stop the
17 car, yelling with his gun pointing at me,
18 but he was moving over to the right.

19 Because I guess he seen I was, like,
20 trying to go to the left. Because I could
21 see he was moving like, Stop the car. And
22 he was moving towards the right as the car
23 was coming. Like, he was steady moving,
24 like slowly moving off to -- off to my right

1 towards the passenger side of the car.

2 Q. Were your windows open, do you remember?

3 A. No. Because the -- no, because the windows
4 got shot out.

5 Q. I mean, you know --

6 A. The whole time. No, the whole time the
7 windows was up, the door windows. I think
8 mine was probably cracked a little bit. But
9 they were up, because he shattered them. I
10 remember he shattered the windows. He
11 shattered the driver's side window, but the
12 window was cracked a little bit. But it got
13 hit with the bullets, so it shattered.

14 Q. You could hear him, though?

15 A. Yes. He was yelling.

16 Q. Even though the windows were up, you could
17 still hear him?

18 A. I said mine was cracked, but it was up. But
19 there was no music playing. He was yelling
20 like you could hear somebody. It wasn't
21 like a soundproofed car. And they weren't
22 using no sirens.

23 Q. I was going to ask you, was there music
24 playing?

1 A. No.

2 Q. Were there cars parked on either side of the
3 street?

4 A. Yes. Dunkeld is, like, a narrow street.
5 But cars are parked on both sides, if I can
6 remember.

7 Q. Is Dunkeld a one-way or a two-way, if you
8 know?

9 A. I think it's two -- it's a two-way.

10 Q. So if there is a --

11 A. If you're on Quincy, you can go up Dunkeld.
12 If you're on Fayston, you can come down
13 Dunkeld.

14 Q. So cars can pass each other on Dunkeld
15 Street?

16 A. No. You have to reverse or back out. They
17 should make it a one-way or a two, whatever.
18 But, no. If two cars are on the street, one
19 driving down and one driving up, the person
20 coming from Fayston would likely have to
21 back up because how would you expect them to
22 back up on Quincy, which is a busier street.
23 Or if there is no car parked, go off to the
24 side.

1 towards the top. And that's when that's
2 happening.

3 Like, I'm not even near Fayston yet.
4 And when I'm -- when he moves off to the
5 right and pointing the gun, like, I still
6 had to drive up some and then take a right
7 once he's behind me. And he's, like,
8 running towards the car.

9 So when I get on Fayston, I'm going
10 forward and all I hear is shots and that's
11 when I, like, kind of ducked.

12 Q. Why didn't you stop on Dunkeld?

13 A. I don't know. Because in -- in my mind, I
14 just wanted to get away from that cruiser
15 just enough to -- I don't know.

16 Q. When did you start to accelerate?

17 A. I accelerated as soon as -- after -- after I
18 heard the cop say, Stop, and I knew that he
19 was out of sight not to be hit, that's when
20 I kept going. That's when I went. And then
21 he was like, Stop the car. And I, like,
22 looked in the rearview and he was, like,
23 turning towards the car.

24 And I went on Fayston. And I don't

1 coming towards the car yelling, Stop the
2 car.

3 Once I got on Fayston, I didn't see
4 no cruiser or nothing. And I looked up real
5 quick and there was no cruise behind me.
6 And I seen the officer, like, in the kneel
7 position shooting the car and that's...

8 Q. Where is that officer now?

9 A. I don't know whose officer. Oh, you mean in
10 -- in the picture or where he is now, like?

11 Q. Where is he when you looked in the mirror?

12 A. Oh, in the middle of the street shooting at
13 the car. Like, the cruiser, he's not even
14 behind us no more because...

15 Q. The middle of what street?

16 A. Fayston, the intersection of Fayston and
17 Dunkeld. Like, when you take a right, he's
18 in the street. And it was -- it was so
19 quick. Like, I looked up and he's -- and
20 then shots is being fire.

21 Q. Is that the same officer you saw before?

22 A. I don't know. That's what I'm saying. I
23 don't know if it's the same. It's weird.
24 Once I went passed the officer, I looked in

1 the rearview mirror quickly. And the blue
2 and whites -- the flashing lights were still
3 behind me. But the officer was still
4 saying, Stop the car, coming towards the
5 car.

6 And I'm accelerating now. So when I
7 take a right on Dunkeld, the next thing you
8 know, I look up again and before -- it was
9 really quick. The next thing you know, they
10 were shooting out the car. So I don't know
11 if it was the same officer or a different
12 officer. I don't know. I can't -- it
13 wasn't like I was in too much detail. It's
14 like everything is, like, a split fraction
15 and everything is happening real fast.

16 Q. Do you lose site of the officer who's trying
17 to get you to stop on Dunkeld?

18 A. Yes. When I took a right, I -- like, he's
19 coming, he's yelling, Stop the car. But
20 when I take that right -- once I get on
21 Dunkeld and take that right on Fayston, I'm
22 like, all right. Like, that -- or in my
23 head it's so quick. Like, I was like, all
24 right, that ordeal is over with.

1 you, were you looking in the rearview behind
2 you, were you looking to the left, the
3 right? What were you looking at?

4 A. I don't know if you've had that feeling. I
5 was looking blank. Like, I'm thinking I'm
6 about to die. I can't -- like, once those
7 shots started firing, I didn't know where I
8 was at until the shots stopped firing. Then
9 I'm looking, like, in the road. But once
10 that first shot started -- because it was
11 rapid. Like, you're startled, shot.

12 It's like when a person crosses the
13 street right before you get hit by a car,
14 like the shock that a person gets hit. It
15 was a startled shock. It was a scary
16 feeling.

17 Q. Did you see anybody exit the vehicle on
18 Perth Street?

19 A. No. I mean, I want to say I think I seen
20 Lenny get out of the car, but I can't -- I
21 can't -- I -- I can't recall. All I
22 remember is that I looked back and I seen
23 the door open.

24 Q. When did you first see somebody exit the

1 car? Strike that question.

2 You exited the car at some point,
3 right?

4 A. Yes.

5 Q. Where was the car when you exited?

6 A. Quincy Street.

7 Q. Who was in the car when you exited it?

8 A. To be honest, you -- it's -- you're only
9 thinking --like, at that point I was just
10 thinking -- I was like, it's all over. I
11 didn't know what to do. Like, I wasn't even
12 paying attention to nobody else. So I -- I
13 wouldn't have known if people were still in
14 the car or they left the car at that point.

15 Q. Well, Carlos was sitting right next to you,
16 right?

17 A. I think so, yes.

18 Q. The Ford Taurus -- actually, a Ford Taurus,
19 it's a pretty small car?

20 A. It's a mid-sized. It's not an Escort.

21 Q. Did you see Carlos exit the car?

22 A. I really can't remember. I could have. It
23 could have been simultaneously. I don't
24 know. Like, I was just thinking about

1 gun pointing at me the whole time. Like,
2 why would you wait until I'm gone to shoot
3 at me?

4 And prior history of watching TV or
5 anything, cops usual put nails in the
6 streets or anything to do to stop a car
7 vehicle. I feel like I was targeted.

8 Q. How do you know that no one else in the car
9 was targeted?

10 A. Because I was driving. And, I mean, I feel
11 -- why would anyone else be targeted in the
12 car, for what reason?

13 Q. Do you think that they could have put down
14 some nail strips in the street to stop you?

15 A. Absolutely. The car was no more than 20 --
16 like, the car never accelerated probably 20,
17 25 miles an hour. The pursuit was very,
18 very slow.

19 And that's why you have radio
20 broadcast. Like, you can -- if a cruiser,
21 anybody is following you, you can broadcast
22 his direction. Or a barricade. Like I
23 said, the car was in front of me. It wasn't
24 like I rammed into the car. Like, if that

1 car never moved, I would have stopped.

2 Q. Were you able to pull around that car if you
3 wanted to?

4 A. No. The car -- no, you wouldn't be able to
5 move it.

6 Q. Is there anything else that made you believe
7 that the officer was trying to shoot you?

8 A. Yes. Because my window shot out. Like, it
9 was -- like, when I was driving, the
10 driver's side window was shot out. The
11 bullets felt -- it felt like they were
12 aiming right at me, my head.

13 Q. What made you feel like that?

14 A. Because...

15 Q. I mean, was there anything you saw that made
16 you feel like that?

17 A. What you do mean? The cop was pointing the
18 gun at my face. I mean, yes. I mean, I
19 thought he was going to shoot me right then
20 and there. And when he didn't, I was
21 like -- I mean, I was allowed to go by. And
22 the next thing you know, I'm hearing shots.
23 That's a really scary feeling hearing
24 bullets go by your ear, windows being shot

1 Q. You weren't shot?

2 A. No.

3 Q. Were you able to hear the shots fired while
4 you were in the car?

5 A. Yes.

6 Q. Could you see the shots fired?

7 A. No.

8 Q. You don't --

9 A. I was seeing shattered glass and I heard
10 bullets going by my head, yes.

11 Q. When you were looking in the rearview mirror
12 and you were able to see the officer on
13 Fayston, could you see him firing?

14 A. To be honest, I -- I mean, I can't -- I
15 don't know if I remember seeing a spark or
16 not. I don't know. I don't want to say yes
17 or no. I can't remember.

18 Q. Did you see any flame or explosion coming
19 out of the gun?

20 A. I could say yes and no. Because, I mean,
21 it's a question that I can't really recall.
22 Because that first shot, I don't know. But,
23 like, that's what I'm saying. I don't --
24 I've had nightmares behind this thing, so I

1 A. I mean, as far as like -- yes, but not from
2 -- I want to say from -- yes, I -- yes, I
3 did.

4 Q. What types of injuries did you suffer?

5 A. I mean, once the ordeal was over from the
6 glass, me running. Like I told, you glass
7 was all over me, shattered all over me when
8 they shot the car up.

9 Q. Were you cut?

10 A. Yes.

11 Q. Do you know if anyone else was injured?

12 A. I mean, all I heard of was what the police
13 ever told me -- all I remember was they told
14 me that Lenny was in the hospital, but I
15 don't know from what injuries.

16 Q. Did you ever hear Eveline Baros-Cepeda say
17 anything while she was in the car?

18 A. No.

19 Q. Did you ever hear her say anything to
20 indicate that she had been shot?

21 A. No.

22 Q. Did you ever hear anyone else in the car say
23 anything to indicate that she had been shot?

24 A. No. Like I said, I didn't know until the

EXHIBIT F

VOL. I

PAGES 1-100

EXHIBITS -1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11803-MLW

SHENIA DANCY-STEWART
as Administratrix of the Estate of
EVELINE BARROS-CEPEDA
Plaintiff

VS.

THOMAS TAYLOR, JR., AND THE
CITY OF BOSTON
Defendants

C O N F I D E N T I A L

DEPOSITION OF LUIS A. CARVALHO, taken
on behalf of the defendant, pursuant to the
applicable provisions of the Federal Rules of
Civil Procedure, before Irma Widomski, a
Registered Merit Reporter, and Certified
Shorthand Reporter, No. 131593 in and for the
Commonwealth of Massachusetts, at the Law
Department, City Hall, Boston, Massachusetts, on
Wednesday, January 16, 2008, commencing at 2:20
p.m.

ORIGINAL

ORIGINAL

VOLUME: II
PAGES: 101-243
EXHIBITS: 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11803-MLW

* * * * *

SHENIA DANCY-STEWART, AS
ADMINISTRATRIX OF THE ESTATE
OF EVELINE BARROS-CEPEDA,
Plaintiff,

VS.

THOMAS TAYLOR, JR., AND THE
CITY OF BOSTON,
Defendants.

* * * * *

CONTINUED DEPOSITION OF LUIS CARVALHO,
taken on behalf of the Defendants, pursuant to
the Massachusetts Rules of Civil Procedure,
before Melinda M. Piccirilli, Certified
Shorthand Reporter and Notary Public within and
for the Commonwealth of Massachusetts, at the
City of Boston Law Department, City Hall,
Boston, Massachusetts, on Wednesday, April 23,
2008, commencing at 2:05 p.m.

(Sketch marked as Exhibit No. 1)

Q. When did you first notice that the police
cruiser was behind you?

A. Once we fully got onto Columbia Road.

Q. Do you recall if the police cruiser's lights
or sirens were on?

A. No, not at the time.

Q. When did the lights and sirens come on, if
they did?

A. Once we approached like Bird Street.

Q. Were you still on Columbia Road when the
lights and sirens came on?

A. No. Once we turned onto Bird Street, the
lights and sirens came on, but the cop car
was right behind us through the whole time.

Q. At any time on Columbia Road was there any
car between you and the cruiser that was
behind you?

A. No. There was no other cars out there at
all.

Q. At any time on Columbia Road did anybody in
the car talk about how there was a police
cruiser behind you?

A. Yes.

1 Q. What was said at that point?

2 A. That he had the right of way.

3 Q. Who said that he had the right of way?

4 A. Maria said it once and I told him it was
5 green also.

6 Q. Is that when Brima continued onto Columbia
7 Road?

8 A. Yes.

9 Q. Other than Maria DeRosa, did anyone else say
10 anything about the police cruiser being
11 behind you while you were on Columbia Road?

12 A. No.

13 Q. Do you know why you turned onto Bird Street?

14 A. Why did we turn onto Bird Street?

15 Q. Yes.

16 A. No.

17 Q. Did Brima Wurie say anything about why he
18 was turning onto Bird Street?

19 A. No.

20 Q. Was it when you turned onto Bird Street that
21 you saw the lights of the police cruiser
22 turn on?

23 A. Yes.

24 Q. Do you recall hearing the police sirens turn

1 on?

2 A. No. Just the lights.

3 Q. What happened next when you turned onto Bird
4 Street?

5 A. I'm not sure if it's Alexander Street or --
6 I don't know the name of the street, but
7 then he took a right down the street.

8 Q. Did the police cruiser follow you onto Bird
9 Street?

10 A. Yes.

11 Q. Was there any car between the Taurus and the
12 cruiser while you were on Bird Street?

13 A. No.

14 Q. Do you remember what people were saying in
15 the car, if anything, while you were on Bird
16 Street?

17 A. I don't remember.

18 Q. Do you remember anybody saying anything
19 about the police cruiser turning its lights
20 on and attempting to pull you over?

21 A. I don't remember.

22 Q. Did it ever become clear to you that the
23 police cruiser was attempting to pull over
24 the car?

1 A. Yes.

2 Q. When did that happen? When did it become
3 clear to you that the cruiser was trying to
4 pull you over?

5 A. When he turned on the lights.

6 Q. That was when the car was turning from
7 Columbia onto Bird Street?

8 A. When we was on Bird Street.

9 Q. Do you remember which street you took next?

10 A. I don't know the name of the street but it
11 was a right. I'm not sure if it's -- I
12 don't want to say the wrong name but we took
13 a right as soon as we came to Bird Street.
14 It wasn't Monadnock. It was the street
15 before Monadnock.

16 Q. Did the Taurus stop for the police cruiser
17 on Bird Street?

18 A. No.

19 Q. Was there ever any discussion in the car as
20 to whether people wanted Brima to pull over
21 or not pull over?

22 A. I don't remember.

23 Q. Do you know why the car didn't pull over on
24 Bird Street?

1 A. No.

2 Q. Do you remember the next street you went on?

3 A. After Bird Street..

4 Q. Well, after Bird Street there was another
5 street. I think you said you took a right
6 but you weren't sure the name of the street;
7 is that correct?

8 A. Yes.

9 Q. Do you remember taking another street after
10 that street?

11 A. Yes.

12 Q. Do you remember the name of that street?

13 A. Dudley Street.

14 Q. While you were on Dudley Street, do you
15 remember anybody talking about the police
16 cruiser still being behind you?

17 A. I don't remember.

18 Q. Was the police cruiser still behind you on
19 Dudley Street?

20 A. Yes.

21 Q. Were its lights still illuminated?

22 A. Yes.

23 Q. Were there any cars between you and the
24 cruiser?

1 A. I don't remember at that time.

2 Q. Did anyone say anything to Brima Wurie,
3 other than Maria DeRosa previously, about
4 the cruiser being behind the vehicle he was
5 driving?

6 A. Don't remember.

7 Q. Did you know why the vehicle still wasn't
8 stopping while it was on Dudley Street?

9 A. No.

10 Q. Did you know the status of Brima Wurie's
11 license?

12 A. No.

13 Q. Did you know anything about Brima Wurie's
14 criminal history at that point?

15 A. No.

16 Q. Do you remember what street you went on
17 next?

18 A. After Dudley?

19 Q. After Dudley.

20 A. Took a left up Magnolia.

21 Q. Do you remember while you were on Magnolia
22 anybody saying anything about the police
23 cruiser being behind you?

24 A. I don't remember.

1 Q. On the street that you took prior to Dudley,
2 did the vehicle ever stop for the police
3 cruiser?

4 A. No. The street after Bird Street, correct?

5 Q. The street between Bird and Dudley.

6 A. No.

7 Q. On Dudley did the Taurus ever stop for the
8 cruiser?

9 A. No.

10 Q. What was the name of the next street you
11 took?

12 A. After Dudley, Magnolia.

13 Q. On Magnolia did the car ever stop for the
14 police cruiser?

15 A. No.

16 Q. Do you remember if the car ever up to that
17 point had slowed down?

18 A. Yes, I remember slowing down because there
19 was a car that was turning off of one of the
20 streets that was ahead of us.

21 Q. Did you have to slow down because that car
22 was in front of you?

23 A. Yes.

24 Q. Was the car slowing down for the police

1 cruiser or because there was a car in front
2 of it that was in its way?

3 MR. PULLER: Objection.

4 Q. You can still answer.

5 A. I exercise my Fifth Amendment.

6 Q. Do you remember the car ever accelerating,
7 increasing speed, while you were on any of
8 those streets?

9 A. You mean increasing, like speeding up on any
10 of the streets other than that what?

11 Q. On Bird or Dudley or Magnolia.

12 A. No. It was all like going into traffic
13 streets, so if you -- you're coming down on
14 Bird Street, you go to the next street.
15 There's buildings in front of it so you
16 don't speed, basically.

17 Q. Do you remember where you went after
18 Magnolia?

19 A. Took a right onto Eveline's street. I don't
20 know the name.

21 Q. The street that Eveline was living on at the
22 time?

23 A. Yes.

24 Q. But you don't remember the name of that

1 street?

2 A. No, I don't remember the name.

3 Q. Do you remember where you went next after
4 that?

5 A. Took a left down Howard Avenue.

6 Q. Do you remember where you went after that?

7 A. Then we took a left onto Quincy Street.

8 Q. Is it fair to say that the time when you
9 were on Columbia and Bird and Dudley and
10 Magnolia and Eveline's street and Howard and
11 Quincy that you were no longer going to Good
12 Times?

13 A. Can you repeat that?

14 Q. At that point when you turned onto Quincy,
15 were you still going to Good Times?

16 A. No.

17 Q. During the time between when you turned from
18 Columbia onto Bird to when you got to Quincy
19 Street, do you remember anyone talking about
20 whether or not you were going to pull over
21 for the police cruiser?

22 A. On Quincy Street?

23 Q. Any time between Columbia and Quincy Street.

24 A. Yes.

1 Q. When was that?

2 A. When we got to -- as we was passing
3 Eveline's house.

4 Q. What was said when you were passing
5 Eveline's house?

6 A. I can't remember who -- somebody said, Don't
7 pull over here.

8 Q. You don't remember who said that?

9 A. No.

10 Q. Do you remember between the time from when
11 the vehicle went from Columbia to Quincy, do
12 you remember Brima Wurie saying anything?

13 A. No.

14 Q. Do you remember him saying about whether or
15 not he intended to pull over for the
16 cruiser?

17 A. No.

18 Q. At any time between Columbia and Quincy did
19 the vehicle pull over for the cruiser?

20 A. He seemed like he was attempting to pull
21 over near Eveline's house until someone
22 says, Don't pull over.

23 Q. Did the car slow down near Eveline's house?

24 A. Yes.

1 Q. Do you remember what was going on when it
2 slowed down?

3 A. What do you mean?

4 Q. Do you remember what people were saying or
5 what people were doing?

6 A. It was a bunch of commotion. I just
7 remember someone said not to pull over and
8 he kept going.

9 Q. Then onto Howard and then to Quincy?

10 A. Yes.

11 Q. What happened when you got onto Quincy?

12 A. They took a right onto Dunkeld.

13 Q. What did you see when the car took a right
14 onto Dunkeld?

15 A. There was people outside.

16 Q. Do you remember where those people were?

17 A. Some were on the sidewalk, on the steps. It
18 was like people everywhere. It was like a
19 really busy neighborhood.

20 Q. Sidewalk and steps to homes?

21 A. Yes. There's like buildings there,
22 apartment complexes.

23 Q. Did you know any of those people?

24 A. As we was driving, I didn't, like, recognize

1 A. No.

2 Q. Were you looking to see the cruiser behind
3 you?

4 A. I had glanced once but it wasn't behind us.

5 Q. When was the last time you saw it?

6 A. Coming off of Howard Ave. From Eveline's
7 street as we took the right, it was coming
8 down Eveline's street as we was on Howard
9 Ave.

10 Q. So the last time you saw it was when it was
11 turning from Wayland onto Howard?

12 A. As we was turning from Wayland.

13 Q. As you were turning from Wayland to Howard?

14 A. It was still up top of Wayland.

15 Q. From the time when you were on Columbia Road
16 up until Dunkeld Street, did the Taurus ever
17 stop for that police cruiser?

18 A. No, it never stopped.

19 Q. Did the cruiser ever turn off its lights, if
20 you're aware?

21 A. From as far as I could see, no.

22 Q. At any time on Dunkeld Street, were you able
23 to see a member of the Boston Police
24 Department? While the car that you were in

1 car was on Dunkeld Street, did you ever see
2 a member of the Boston Police Department?

3 A. On Dunkeld Street?

4 Q. Yes.

5 A. Before we passed the cruiser or while we was
6 on Dunkeld?

7 Q. While you were on Dunkeld Street, did you
8 ever see a member of the Boston Police
9 Department?

10 A. No, I don't recall.

11 Q. What were you doing while you were in the
12 car on Dunkeld Street?

13 A. I was just sitting. I was ducked down just
14 sitting slouched down.

15 Q. Why were you slouched down?

16 A. That's how I sit in the car basically.

17 Q. What was Maria DeRosa doing in the car?

18 A. I can't tell you.

19 Q. You were in the back seat with her, right?

20 A. Yes. I was near the passenger's side.

21 Q. What was Eveline Barros-Cepeda doing while
22 you were on Dunkeld Street?

23 A. I couldn't tell you.

24 Q. You were sitting next to her?

EXHIBIT G

VOL. I
PAGES 1-197
EXHIBITS 1-3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11803-MLW

SHENIA DANCY-STEWART
as Administratrix of the Estate of
EVELINE BARROS-CEPEDA
Plaintiff
vs.

THOMAS TAYLOR, JR. AND THE
CITY OF BOSTON
Defendants

C O N F I D E N T I A L

DEPOSITION OF **MICHAEL PAILLANT**, taken on
behalf of the plaintiff, pursuant to the
applicable provisions of the Federal Rules of
Civil Procedure, before Irma Widomski, a
Registered Merit Reporter, and Certified
Shorthand Reporter, No. 131593 in and for the
Commonwealth of Massachusetts, at the Law
Offices of Andrew Stockwell-Alpert, 11 Beacon
Street, Suite 1210, Boston, Massachusetts, on,
Thursday, January 31, 2008, commencing at 10:00
a.m.

WIDOMSKI COURT REPORTING ASSOCIATES
ONE SUNSET DRIVE
WAKEFIELD, MASSACHUSETTS 01880
(781) 246-0710

1 who's at that location.

2 Q. How many years did you do security work?

3 A. Maybe three. Maybe three or four.

4 Q. This is all before Curry college?

5 A. Yes.

6 Q. Did you work anyplace else other than the
7 security job that you said you worked at for
8 about three years before going to Curry College?

9 A. Not that I recall, no.

10 Q. Did you have any firearms weapons training when
11 you were working for the security company?

12 A. No.

13 Q. Was that because you didn't carry a weapon?

14 A. That's correct.

15 Q. Now, you're familiar with some of the facts and
16 circumstances regarding an incident that
17 occurred in the area of Dunkeld and Fayston
18 Streets that resulted in the death of Eveline
19 Barros-Cepeda. Would that be fair to say,
20 Officer?

21 A. Yes.

22 Q. Where were you assigned on September 8, 2002?

23 A. Area B-3 Mattapan.

24 Q. Were you assigned to a particular detail or tour

1 of duty on September 8, 2002?

2 A. I was assigned to the last half tour of duty.

3 Q. What does that mean?

4 A. That would be the shift that starts at 11:45
5 p.m. to 7:30 a.m.

6 Q. And was anyone assigned with you on that detail?

7 A. I was in a unit, I had a partner with me, yes.

8 Q. Who was your partner?

9 A. Officer Taylor.

10 Q. Prior to September 8, 2002, on how many duties
11 or details had you worked with Officer Taylor?

12 MS. LITSAS: Objection.

13 Q. You can answer the question.

14 A. I don't normally work with him. If I did, it
15 might have been once.

16 Q. Are you aware of any instances in which Officer
17 Taylor was reprimanded by the Boston Police
18 Department?

19 A. No.

20 Q. Are you aware of any instances in which Officer
21 Taylor was -- received any type of disciplinary
22 action by the Boston Police Department?

23 A. No.

24 Q. Have you ever been reprimanded by the Boston

1 Taylor in January?

2 A. If it was, okay, most likely it might have been
3 before I spoke with Officer Taylor in January.

4 Q. So knowing that, Officer, and knowing that you
5 had just spoke with members of the law
6 department for the City of Boston, is it your
7 testimony here today that when you talked to
8 Officer Taylor in January of this year, you did
9 not talk to Officer Taylor about the facts and
10 circumstances having to do with this case, is
11 that your testimony?

12 MS. LITSAS: Objection.

13 A. I didn't talk about the facts of the case.

14 Q. Did you talk to Officer Taylor about anything
15 having to do with this case when you talked to
16 him in January of 2008?

17 A. No.

18 Q. Other than your attorneys, have you talked to
19 anybody having to do with the facts and
20 circumstances of this case after you became
21 aware that you had to come to this deposition?

22 A. Other than getting a slip signed to come to
23 court or to come for a meeting, no.

24 Q. These incidents in which you talked to Officer

1 Taylor in January of this year, you said they
2 were both at the station, right?

3 A. I don't remember saying both. I said I spoke to
4 him in January. I didn't even say specifically
5 how many times.

6 Q. How many times did you talk to him in January of
7 this year?

8 A. A couple of times.

9 Q. And what do you mean by a couple?

10 A. Several times.

11 Q. What do you mean by several?

12 A. More than two.

13 Q. Less than ten?

14 A. Most likely.

15 Q. So somewhere between two and ten times you
16 talked to Officer Taylor in January of this
17 year?

18 A. Roughly, yes.

19 Q. Where did you talk to Officer Taylor sometime
20 between two and ten times in January of 2008?

21 A. About music.

22 Q. Anything else other than music?

23 A. Music, and possibly things to do with booking
24 prisoners. That is all we mainly discussed.

1 Q. Where did these conversations take place?

2 A. At the station.

3 Q. And all of these conversations took place after
4 your meeting with the law department for the
5 City of Boston and after you realized that you
6 had to come to this deposition, is that correct?

7 MS. LITSAS: Objection.

8 A. All of these conversations took place in
9 January.

10 Q. It took place after your meeting with the City
11 of Boston law department, correct?

12 A. That's correct.

13 Q. And they took place at some point in time --

14 A. Well, I'm not going to say that's correct.
15 You're not referring to which meeting, so it's
16 kind of throwing things off.

17 Q. How many meetings did you have with the City of
18 Boston, with the lawyer for the City of Boston?

19 A. A couple.

20 Q. By a couple, you mean how many?

21 A. I can't think of an exact number now. Maybe
22 two, three.

23 Q. Were they all in the same room?

24 A. No.

1 A. Personally, yes.

2 Q. Could you explain to us, please, in detail, the
3 rules and regulations concerning the discharge
4 of firearms and moving vehicles between 2002 and
5 the present day?

6 MS. LITSAS: Objection. Asked and
7 answered.

8 A. I believe you asked me what it was prior to 2002
9 and after 2002 so...

10 Q. Other than what you have told us between 2002
11 and the present day, is there anything that you
12 would like to add concerning the policy of the
13 Boston Police Department with regard to the
14 discharge of firearms in moving vehicles?

15 MS. LITSAS: Objection.

16 Q. Other than what you have told us?

17 MS. LITSAS: Objection.

18 A. I have nothing else to add, sir.

19 Q. Officer, could you describe the facts, some of
20 the facts and circumstances that brought you to
21 the area of Dunkeld and Fayston Streets on
22 September 8, 2002?

23 A. I was participating in an investigation along
24 with Officer Taylor in regards to a sexual

1 assault.

2 Q. What happened in the course of that
3 investigation?

4 A. Officer Taylor along with -- Officer Taylor went
5 to the building that we were investigating.

6 Q. What happened after?

7 A. I was standing by my police cruiser and I had an
8 individual on board.

9 Q. What was that individual's name?

10 A. Nicholas, I can't recall his full name.

11 Q. James Nicholas?

12 A. That could be correct.

13 Q. What was your purpose in having Mr. Nicholas in
14 your vehicle at that time?

15 A. Like I said, it was an investigation and we was
16 looking into the allegations.

17 Q. What did Mr. Nicholas have to do with these
18 allegations?

19 A. It was an allegation of sexual assault.

20 Q. What did he have to do with these allegations of
21 sexual assault as far as you could tell?

22 A. He was being accused of it.

23 Q. So why was he in your car?

24 A. He was doing a bring back to the location.

1 investigation?

2 A. I don't think specifically, no.

3 Q. What was your understanding of the purpose of
4 this individual being present with Officer
5 Taylor during the course of this investigation?

6 A. I was under the impression she was the mother of
7 the victim.

8 Q. Tell us what happened when Officer Taylor --
9 strike the question.

10 Where was your cruiser parked as
11 Officer Taylor and the mother of this victim was
12 approaching your cruiser?

13 A. At the top of Fayston and Dunkeld Street.

14 Q. Tell us what happened as Officer Taylor was
15 walking outside the building, and I think this
16 building was located at 85 Fayston Street?

17 A. Yes.

18 Q. Tell us what happened as Officer Taylor was
19 exiting the building with the mother of the
20 alleged victim concerning this sexual assault
21 investigation?

22 A. I was standing outside my police cruiser and
23 from a distance there was lights flashing from a
24 police cruiser and the suspect's vehicle came

1 speeding up Fayston -- speeding up Dunkeld
2 Street.

3 Q. Where was this cruiser in relationship to the
4 suspect's vehicle?

5 A. Behind the suspect's vehicle.

6 Q. On Dunkeld Street?

7 A. Yes.

8 Q. How close to the suspect's vehicle was the
9 cruiser when you first noticed the cruiser
10 behind the suspect's vehicle?

11 A. I would say it was behind it. I don't have an
12 exact distance. It was close enough.

13 Q. What did you do after you saw this officer?

14 A. I proceeded to assist with the traffic stop.

15 Q. What did you do? Please, explain what you did
16 when you said you attempted to assist in this
17 traffic stop?

18 A. I raised my hand and gave the suspect's vehicle
19 some strong verbal commands and ordered the
20 vehicle to stop.

21 Q. I'm sorry, Officer, you said you raised your
22 hand in the air?

23 A. Yes.

24 Q. And with an open palm?

1 A. Yes.

2 Q. And that was your right hand or your left hand?

3 A. My left hand.

4 Q. What did you do with your right hand, if
5 anything?

6 A. Nothing.

7 Q. Tell us what happened after you raised your left
8 hand?

9 A. The vehicle continued towards the top of the
10 street. I then withdrew my firearm.

11 Q. When you withdrew your firearm, how close was
12 the vehicle to you?

13 A. Halfway up the street.

14 Q. Halfway up Dunkeld Street?

15 A. Yes.

16 Q. Where were you on Dunkeld Street when you
17 withdrew your weapon?

18 A. Dunkeld and Fayston Street.

19 Q. You were at the intersection of Dunkeld and
20 Fayston Streets?

21 A. Yes.

22 Q. Your cruiser was directly across from you, where
23 you were standing at the intersection of Dunkeld
24 and Fayston Streets?

1 rereneu my objection. You can ask him questions
2 but --

3 Q. I want you to tell me, Officer, where was your
4 vehicle? In what direction was your vehicle
5 parked when you raised your hand and withdrew
6 your weapon as this vehicle was approaching you
7 on Dunkeld Street?

8 MS. LITSAS: Objection.

9 A. You said explain to you where my vehicle was
10 parked?

11 Q. Yes. I want you to tell me, tell me where, in
12 what direction was your vehicle pointed when you
13 had your left hand up and your vehicle --
14 withdrawn -- as his vehicle was coming down
15 Dunkeld Street, which direction was vehicle?

16 A. On Fayston Street.

17 Q. In which direction?

18 A. Facing the incorrect way.

19 Q. So facing in the opposite direction of traffic
20 on Fayston Street?

21 A. That's correct.

22 Q. And when your gun was withdrawn, were you
23 pointing it at the suspect vehicle?

24 A. That's correct.

1 standing at the intersection of Dunkeld and
2 Fayston Streets, you withdrew your weapon and
3 pointed it at the motor vehicle and said Stop,
4 would that be fair to say?

5 MS. LITSAS: Objection.

6 A. From the time I saw the motor vehicle, I raised
7 my hand and gave it strong verbal commands.

8 Q. Right, and that was at the beginning of Dunkeld
9 Street, right?

10 A. The beginning of Dunkeld and Quincy Streets.

11 Q. And about halfway down Dunkeld Street, you
12 withdrew your weapon.

13 A. Halfway up the street, I withdrew my weapon.

14 Q. And you pointed it at the vehicle?

15 A. That's correct.

16 Q. And what happened after you pointed your weapon
17 at the vehicle?

18 A. The vehicle continued in my direction.

19 Q. Were there cars parked on both sides of Dunkeld
20 Street as the vehicle approached you with your
21 weapon drawn?

22 A. Yes.

23 Q. Were there vehicles parked on both sides of
24 Fayston Street as this vehicle approached you

1 almost as if it was going to stop.

2 Q. So approximately what, one or two miles per
3 hour?

4 A. I don't know.

5 MS. LITSAS: Objection.

6 Q. But it was definitely at a speed that gave you
7 the impression that this motor vehicle was going
8 to stop, right?

9 A. That's correct.

10 Q. Then something changed?

11 A. That's correct.

12 Q. Before we talk about that change, I'm going to
13 ask you a few more questions, Officer.

14 Officer, at the time that you withdrew
15 your gun at the vehicle, did you have any reason
16 to believe that the driver or any of its
17 occupants committed a crime?

18 A. Yes.

19 Q. What crime was that?

20 A. Failure to stop for a police officer.

21 Q. And you, would it be fair to say, Officer, that
22 you made that determination during the first 100
23 feet on Dunkeld Street?

24 MS. LITSAS: Objection.

1 AFTERNOON SESSION (1:35 P.M.)

2 BY MR. DEMIRANDA:

3 Q. We're back on the record.

4 Officer, I think one of the things we
5 were talking about before the break was this
6 motor vehicle was less than 20 feet as you
7 indicated from you when you thought it was going
8 to stop, is that a fair statement?

9 MS. LITSAS: Objection.

10 A. Yes. That's what I said.

11 Q. Tell us what happened, Officer, right after
12 that?

13 A. The vehicle accelerated quickly.

14 Q. What do you mean accelerated quickly?

15 A. The driver stepped on the gas, floored it and I
16 just heard the engine roaring and the car just
17 came toward me very quickly.

18 Q. And then what happened?

19 A. I went to jump out of my way, I jumped to my
20 left.

21 Q. And where were you standing on -- were you on
22 Dunkeld Street when you jumped to your left?

23 A. At the intersection of Dunkeld and Fayston.

24 Q. Where were you, were you like in the middle of

1 the road in the intersection?

2 A. The middle of Dunkeld right at the top.

3 Q. Right where Dunkeld and Fayston meet?

4 A. About, yes.

5 Q. Well, before you jumped to your left, how far
6 was the suspect's vehicle from your person?

7 A. It was right upon me. The vehicle was right up
8 on me.

9 Q. And when you say right up on me, approximately
10 how many feet away was this vehicle from your
11 body when you jumped to your left?

12 A. As I started to move, the vehicle made contact
13 with me, the vehicle basically struck me as I
14 was moving.

15 Q. I want you to concentrate, if you would,
16 Officer. Just a couple of questions I want to
17 ask you.

18 Before the vehicle actually came in
19 contact with you, okay, I would like to know
20 when you jumped to your left, how far away was
21 this vehicle from your body?

22 A. As I was moving, my hand was out, the vehicle
23 had already struck me on my hand area and I was
24 bracing myself as I was moving over so the

1 for the deposition.

2 Q. Where was Officer Taylor after the vehicle
3 accelerated and was moving in your direction?

4 A. I don't know, I don't know where he was
5 standing.

6 Q. Could you tell us, Officer, what were you
7 thinking after the vehicle accelerated and you
8 heard this loud engine of the vehicle as it was
9 coming, as it was moving directly at you?

10 MS. LITSAS: Objection.

11 A. I just reacted. I didn't have time to stand and
12 think about too much. My reaction was to move.

13 Q. Did you think that the vehicle was going to
14 strike you?

15 A. At what point, what point are you asking me
16 that? Where I was? What, at what time?

17 Q. At any point in time, did you think that vehicle
18 was going to strike you?

19 A. After it got real close to me, yes, I did think
20 it was going to strike me.

21 Q. After, the closer it got to you, the more you
22 thought that it was going to strike you, is that
23 correct?

24 MS. LITSAS: Objection.

1 went by?

2 A. The vehicle struck me after I made my first
3 initial movement.

4 Q. But how much time went by, Officer, between the
5 time that you hear the engine, the vehicle
6 accelerates, you move to the left, and then the
7 vehicle strikes you, how much time went by?

8 MS. LITSAS: Objection.

9 A. Maybe three seconds, three.

10 Q. And at some point in time, Officer, as you were
11 moving to the left with your gun on your person
12 somewhere, you didn't discharge your firearm,
13 did you?

14 A. No.

15 Q. Why not?

16 A. My main thing, objective at that time was to get
17 out of the way.

18 Q. But you didn't get out of the way, did you,
19 Officer?

20 MS. LITSAS: Objection.

21 Q. Is that correct?

22 MS. LITSAS: Objection.

23 Q. You can answer the question.

24 A. Well, however you perceive it, but I did move

1 MS. LITSAS: Objection.

2 A. It means I put my fire -- put my firearm down by
3 my side. I was about to approach the vehicle
4 and I could not after -- when I say approach the
5 vehicle, that means to conduct a traffic stop.
6 Now, assisting with the traffic stop, I stated
7 to you before ever since the vehicle was coming
8 up the street, that's what I said I was doing
9 and I was basically assisting further.

10 Q. In any event, the vehicle, that situation was
11 not over?

12 A. No, it was not.

13 Q. And a new situation was about to begin, would
14 that be fair?

15 A. Yes.

16 Q. And that new situation you have indicated
17 included this motor vehicle striking you, is
18 that correct?

19 A. That's correct.

20 Q. And what part of the vehicle struck what part of
21 your body?

22 A. The front of the vehicle.

23 Q. What part of the front of the vehicle?

24 A. The front hood area, the bumper area, the tire,

1 the right front tire.

2 Q. Just go step by --

3 MS. LITSAS: You have to let him
4 finish his answer, Del. Thanks.

5 Q. I'm going to draw a box on this diagram.

6 Officer, that box represents the
7 vehicle, the suspect vehicle that struck you. I
8 know it's not very good, but I want you to tell
9 me, Officer, what part of that vehicle first
10 strike what part of your body?

11 MS. LITSAS: Objection.

12 A. The front of the vehicle struck my hand area.

13 Q. Which hand?

14 A. I don't know which hand. I know it was both
15 hands but it was my hand.

16 Q. And what part of the front of the vehicle struck
17 your hand or hands?

18 A. From the beginning or from the beginning to end?

19 Q. From the very beginning?

20 A. The front end of the vehicle.

21 Q. *I want you to draw an X on that box and tell me
22 what part of that vehicle struck your hand or
23 hands?

24 MS. LITSAS: I object. The witness is

1 here to provide oral testimony, not to provide
2 anything written and in written form.

3 MR. DeMIRANDA: Mark that, please.

4 This is the same basis, the basis for
5 your objection is the same as your earlier
6 objection, correct?

7 MS. LITSAS: Mm-hmm.

8 Q. What part of the front of the vehicle struck
9 your hand, Officer, what part of the front? You
10 said it was the hood?

11 A. The hood area, yes.

12 Q. The hood and the bumper?

13 A. I didn't say the bumper struck my hand.

14 Q. Just the hood?

15 A. At that point?

16 MS. LITSAS: Objection.

17 Q. Yes, at that point. What part of the hood
18 struck your hand or hands?

19 A. The front part of the hood.

20 Q. What part of the front of the hood, the
21 passenger side of the hood or the middle part of
22 the hood, the driver's side, what part of the
23 hood struck your hand or hands?

24 A. The middle part towards the right passenger

1 side.

2 Q. So the middle towards the right passenger side,
3 so if I were to split that motor vehicle in
4 half, half being the driver's side and half
5 being the passenger's side, are you telling us
6 that the middle of the driver's side of the hood
7 was the first part of that vehicle that strike
8 your hand or hands, is that correct?

9 MS. LITSAS: Objection.

10 A. Somewhere between the middle and the right
11 passenger side.

12 Q. And when that vehicle, that vehicle struck, the
13 middle part of the passenger side of that
14 vehicle struck your hand or hands, where were
15 you standing?

16 A. In front of the vehicle.

17 Q. And what part of your body was standing in front
18 of the vehicle?

19 A. My whole body was standing in front of the
20 vehicle.

21 Q. Where was your body in the roadway just before
22 impact?

23 A. Standing in the middle of the vehicle -- the
24 middle of the street.

1 MS. LITSAS: The vehicle struck the --

2 Q. I'm sorry, I keep saying -- I'm sorry.

3 MS. LITSAS: His body.

4 Q. What part of the vehicle struck what part of
5 your body as your body came into contact with
6 the hood of the vehicle?

7 A. My elbow area and my leg area.

8 Q. And then what happened?

9 A. When I landed on the side of the car, the tire
10 rotated, the right passenger tire rotated into
11 my calf. I pulled my leg away from the tire.

12 Q. So as you rolled off the hood of the vehicle, as
13 you were coming down, what part of your body
14 struck what part of the vehicle?

15 A. As I came off?

16 Q. Yes.

17 A. My foot landed on the ground and the tire
18 rotated into my leg.

19 Q. Which foot hit the ground first?

20 A. I don't know which foot hit the ground first. I
21 do know that when my leg hit the ground, the
22 tire was upon my leg rotating into my left leg.

23 Q. When your foot hit the ground or one of your
24 feet hit the ground, you were standing?

1 part of the vehicle came into contact with what
2 part of your body?

3 A. That's what I recall. That's about it.

4 Q. When your vehicle hit the door and fender area,
5 were you standing?

6 A. No.

7 Q. Where were you?

8 A. I was bent down.

9 Q. By bent down, what do you mean?

10 A. I braced myself. I was down on the ground,
11 knees bent, prone down.

12 Q. And on the ground knees bent, what were you
13 doing on the ground, knees bent?

14 A. Protecting myself.

15 Q. Protecting yourself from what?

16 A. From the vehicle.

17 Q. Did you come in contact with the vehicle after
18 your elbow hit the front door and fender area as
19 you were crouched down on the ground?

20 A. That's -- it was all one, it was all one motion,
21 yes. It was about the same time.

22 Q. When you say you were crouched down, were you
23 able to look inside of the windows of the
24 vehicle as it passed you?

1 MS. LITSAS: Objection.

2 A. I was too low to do that.

3 Q. Where was your head in relationship to the
4 windows of the vehicle as you were crouched down
5 on the side of the vehicle?

6 A. It was below the -- below the window sill.

7 Q. How long were you crouched down on the side of
8 the window before the vehicle continued moving
9 forward?

10 A. A couple seconds.

11 Q. Where was the vehicle after you rolled over the
12 hood?

13 A. Still going straight about to turn. That wasn't
14 my concentration.

15 Q. And where was the vehicle as you, as your left
16 elbow struck the door, front door and fender of
17 the vehicle?

18 A. Where was what?

19 Q. Where was the vehicle when -- after your elbow
20 struck the door and the fender with the vehicle?

21 A. In the process of turning.

22 Q. How much of the vehicle was on Dunkeld Street
23 and how much of the vehicle was on Fayston
24 Street after your elbow hit the side of the

1 vehicle?

2 A. That I don't know.

3 Q. Was the vehicle at an angle turning right as
4 you -- as your elbow struck the door and fender
5 of the vehicle?

6 A. Yes.

7 Q. How much of an angle was the vehicle as you --
8 after your elbow struck the door and fender of
9 the vehicle?

10 A. I would have to guess that.

11 Q. How much of the tires were turned to the right
12 after your elbow struck the door and fender of
13 the vehicle?

14 A. Enough so that the tire treads would cut into my
15 skin.

16 Q. Which means that the tires were turned to a
17 large extent in order for you to receive the
18 injuries that you received to your left calf,
19 would that be fair to say?

20 MS. LITSAS: Objection.

21 A. The wheel was turned in order to have made
22 contact with me, yes.

23 Q. How tall are you, Officer?

24 A. Five-ten.

1 Q. Did you have your head up?

2 A. No.

3 Q. Where was your head, what were you looking at?
4 Were you looking at the ground?

5 A. I was looking towards the ground. I was
6 protecting myself. Obviously I heard gunshots,
7 I stayed low to the ground.

8 Q. Were you looking forward?

9 A. No.

10 Q. After you heard the gunshots?

11 A. No.

12 Q. What point in time did you make these
13 observations of the vehicle on Fayston Street
14 after you were struck?

15 A. After I got up.

16 Q. How long were you on the ground before you made
17 your first observation of this vehicle on
18 Fayston Street?

19 A. It was a couple of seconds.

20 Q. A couple of seconds, so you were on the ground
21 for a couple of seconds, the car continues down
22 on Fayston Street, you stand up, is that
23 correct?

24 MS. LITSAS: Objection.

1 front of me, so that's a negative.

2 Q. How long is Fayston Street? You said a couple
3 of blocks?

4 A. Yes. It's real long.

5 Q. Fayston Street is real long?

6 A. Yes.

7 Q. How long is Perth Street?

8 A. It's short. It's about the length of Dunkeld
9 Street.

10 Q. Which is how long?

11 A. I would have to guess.

12 Q. You told us before that Dunkeld Street was about
13 200 feet?

14 A. That's what I said before, yes.

15 Q. Is Perth Street about the same length as Dunkeld
16 Street?

17 A. Well, they are adjacent to each other so my
18 guess, they would be roughly around the same
19 length.

20 Q. When the car went to Perth Street, did you make
21 any other observations of the vehicle or the
22 occupants of that vehicle?

23 A. No.

24 Q. Did you at any point in time see the occupants

1 exit the vehicle?

2 A. Not on Perth Street.

3 Q. Where did you make that observation?

4 A. On Quincy Street.

5 Q. Tell us what you saw.

6 A. I saw three occupants exit the vehicle.

7 Q. And what happened after you saw the three
8 occupants exit the vehicle?

9 A. They ran to adjacent yards and then over a
10 fence.

11 Q. Were these males or females?

12 A. It appeared to be males.

13 Q. Black males, white males?

14 A. They appeared to be dark-skinned males.

15 Q. What kind of clothes were they wearing?

16 A. They were just dark clothing. I don't have any
17 specifics on these individuals.

18 Q. Did you continue walking down Perth Street after
19 you saw these vehicles exit the vehicle on
20 Quincy?

21 A. I continued hobbling down Perth Street, yes.

22 Q. As you were walking down Perth Street, or
23 hobbling down Perth Street, did you see the
24 cruiser, the original cruiser that you saw with

1 Q. What caused you and Officer Taylor to be -- what
2 caused you to seek medical assistance from the
3 ambulance personnel after they arrived on the
4 scene?

5 MS. LITSAS: Objection.

6 A. I was transported to the hospital because I
7 needed to seek treatment for the injuries I
8 stated about earlier.

9 Q. What was it, what was going on with your
10 injuries at the time you spoke with the
11 ambulance personnel?

12 A. I had injuries to my knee, my elbow and my calf
13 area.

14 Q. Had your injuries gotten any worse or were they
15 pretty much the same as they were when you --
16 after you were struck by the vehicle?

17 A. They had gotten worse.

18 Q. How much worse?

19 A. It was swelled.

20 Q. What's swelling?

21 A. My knee area.

22 Q. The left side of your knee?

23 A. Yes.

24 Q. The left side of your knee got worse and began

EXHIBIT H

VOL. I
PAGES 1-155
EXHIBITS A-F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11803-MLW

SHENIA DANCY-STEWART
as Administratrix of the Estate of
EVELINE BARROS-CEPEDA
Plaintiff
vs.

THOMAS TAYLOR, JR. AND THE
CITY OF BOSTON
Defendants

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF **THOMAS TAYLOR, JR.**, taken on behalf of the plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Irma Widomski, a Registered Merit Reporter, and Certified Shorthand Reporter, No. 131593 in and for the Commonwealth of Massachusetts, at the Law Offices of Andrew Stockwell-Alpert, 11 Beacon Street, Suite 1210, Boston, Massachusetts, on, Monday, February 4, 2008, commencing at 10:00 a.m..

WIDOMSKI COURT REPORTING ASSOCIATES
ONE SUNSET DRIVE
WAKEFIELD, MASSACHUSETTS 01880
(781) 246-0710

1 (Telephone ringing.)

2 Q. -- what if anything did you do with your
3 vehicle?

4 MS. LITSAS: Objection.

5 Q. Did you park?

6 A. The vehicle was parked but not at 85 Fayston.

7 Q. Where did you -- where was the vehicle parked?

8 A. It was parked, I believe, in front of 77 or 75
9 Fayston Street.

10 Q. And James Nicholas, he was still in the vehicle?

11 A. Yes.

12 Q. And did one or both of you go to speak to the
13 alleged victim at 85 Fayston?

14 A. One of us did.

15 Q. Which one?

16 A. That would be me.

17 Q. What actions did you engage in, what did you do?

18 A. I proceeded to walk towards 85 Fayston and
19 before I actually made it to the stairs of 85
20 Fayston, the woman that we had spoke with on
21 Harvard Street had walked up to me.

22 Q. Did you see whether she came out of a building
23 or did she walk down the street towards you?

24 A. I don't remember if she came out of a building.

1 Q. And what was the substance of your conversation
2 with her?

3 A. I asked her to come back to the police cruiser
4 with me because we had someone in the car that
5 we wanted her to look at.

6 Q. How far had you traveled -- strike that. Did
7 you walk down the sidewalk when you got out of
8 the car at about 77 Fayston?

9 A. Yes.

10 Q. And you walked towards, down towards 85 Fayston?

11 A. Yes.

12 Q. Did she meet you somewhere along the way?

13 A. Yes.

14 Q. Approximately what was the distance that you
15 walked before she actually came and met you?

16 A. I don't know. I almost made it to 85 Fayston.

17 Q. And did she proceed to walk back to the vehicle
18 with you?

19 A. Yes, she did.

20 Q. And what's the next thing that you remember
21 happening? Strike that. Were you able to
22 observe whether or not Officer Paillant was
23 still in the vehicle or not?

24 A. Yes.

1 Q. Was he?

2 A. No, he had exited the vehicle.

3 Q. Did you see where he was at the point that you
4 first made eye contact with him?

5 MS. LITSAS: Objection.

6 A. I saw him standing next to the vehicle.

7 Q. And how close to the vehicle was he standing?

8 A. About as close as you are to -- about a foot.

9 Q. Was he in the street or on the sidewalk?

10 A. He was in the street.

11 Q. And how far in the street was he with respect to
12 the curb?

13 A. The width of the police cruiser, and he was
14 probably a foot away from that.

15 Q. Do you recollect where the vehicle was parked,
16 the right way or the wrong way on Fayston
17 Street?

18 A. Was it parked which way?

19 Q. Right way or wrong way on Fayston Street?

20 A. I didn't know whether it was the right way or
21 the wrong way.

22 Q. Did you have any knowledge, did you learn at any
23 point after that incident as to whether the
24 vehicle was parked the right way or the wrong

1 immediately after you saw your partner on
2 Fayston Street?

3 A. Something got his attention. He was looking
4 down Dunkeld Street and he made a noise like
5 what the --

6 Q. And you heard that, the "what the"?

7 A. Yes.

8 Q. About how far away were you when you heard that?

9 A. I'm not sure.

10 Q. And was the alleged victim of the sexual assault
11 still with you at the time?

12 A. Yes.

13 Q. What is the next thing that happened?

14 A. Officer Paillant started walking towards, more
15 towards Dunkeld Street to more in the middle of
16 the street of Fayston.

17 Q. From your vantage point at around 77, 78, 80
18 Fayston Street, was Officer Paillant diagonally
19 into your left?

20 MS. LITSAS: Objection.

21 Q. Was to your left?

22 A. When I was coming back?

23 Q. Right.

24 A. No.

1 Q. And did you change your location with respect to
2 the curb in any way while you continued to
3 observe Officer Paillant?

4 MS. LITSAS: Objection.

5 A. I did change my position.

6 Q. How?

7 A. I had stepped off the curb. After I had walked,
8 I was walking up the sidewalk, then I stepped
9 off the curb.

10 Q. And how far -- strike that. When you stepped
11 off the curb, did you step into the street?

12 A. No.

13 Q. So what did you do, where did you step to?

14 A. I was in the line of where the parked cars would
15 be. I wasn't in the street.

16 Q. What is the next thing that you saw happen in
17 connection with this incident?

18 A. Officer Paillant started yelling to stop and put
19 his hands up, both hands up, and he was yelling
20 stop.

21 Q. Had you changed your position with respect to
22 the curb between the time you saw something draw
23 Officer Paillant's attention and the time you
24 saw him putting his hands up and yelling stop?

1 MS. LITSAS: Objection.

2 A. No.

3 Q. Did you make any observations in Officer
4 Paillant's direction at the point that he raised
5 his hands and said stop?

6 A. I'm sorry, can you rephrase that?

7 Q. What, if anything, did you observe happening at
8 the moment that Officer Paillant raised his
9 hands and yelled stop or said stop?

10 A. I heard a noise. And then I heard a car engine
11 revving up, kind of getting louder. That's when
12 Officer Paillant pulled out his gun.

13 Q. Prior to hearing the engine noise revving up,
14 were you aware of any engine noise at all coming
15 from the direction that you heard the revving up
16 sound?

17 A. No, I was not aware of any noise.

18 Q. When you saw Officer -- prior to seeing Officer
19 Paillant -- strike that. When you saw Officer
20 Paillant raising his hands in a stop gesture and
21 saying stop, did you have occasion to see
22 anything that he might be directing his
23 attention to at that time?

24 A. No.

1 Q. How soon after you saw Officer Paillant's hands
2 go up did you become conscious of the revving up
3 noise?

4 A. I don't know. Almost instantly. It was very
5 fast.

6 Q. Was it a second?

7 A. I don't know.

8 Q. Was it less than five seconds?

9 A. It was almost instantly.

10 Q. And you say you observed Officer Paillant draw
11 his gun or raise his gun?

12 A. Yes.

13 Q. And in what manner did he raise his gun? You
14 can demonstrate for that. Did he hold it over
15 his head, did he hold it straight out? Please
16 describe how he raised his gun?

17 MS. LITSAS: I'll object for the
18 purposes of the record.

19 A. He pulled it out.

20 Q. Please demonstrate.

21 MS. LITSAS: I object again.

22 Q. Okay.

23 A. He pulled it from his holster. And I remember
24 his other hand still up in a stop gesture, and

1 he was doing it like a pumping motion with the
2 stop gesture. That hand with the gun in it was
3 also doing the same thing.

4 Q. Could you please demonstrate with your hands?

5 A. Kind of like this. (Demonstrating.)

6 Q. Okay. The hand with the gun, what was that
7 doing?

8 A. The same thing that he was holding the gun.

9 MS. LITSAS: I object again.

10 Q. Was the gun pointed in the air or was the gun
11 pointed somewhere else?

12 A. I guess it would be moving.

13 Q. Were you able to observe whether at any point he
14 was actually pointing it towards anything other
15 than in the air?

16 A. I don't recall.

17 Q. And when he took his gun out, what did you do?

18 A. I took mine out and I turned to Ms. Cummings who
19 I was walking with. I put my hand back. I told
20 her to wait there.

21 Q. Where was there that you are referring to?

22 A. Where I left her on the sidewalk.

23 Q. Did you make any observations as to what she did
24 in response to that?

1 take this second by second. The very next thing
2 that happened?

3 MS. LITSAS: Objection.

4 A. I couldn't tell you second by second.

5 Q. What's the next thing that happened?

6 A. This all unfolded rather quickly.

7 Q. What is the next thing that happened?

8 A. After I stepped in front of Ms. Cummings and
9 told her to stay and pulled my gun out, I saw
10 the white car come up Dunkeld and strike Officer
11 Paillant as he was trying to move to his left.

12 Q. How soon after you pulled your gun out did you
13 first see the white car?

14 A. It seemed almost as soon as I did.

15 Q. And from what direction was the white car
16 coming?

17 A. It was coming up Dunkeld on to, up to Fayston.

18 Q. Did you change your position at all on Fayston
19 Street during any of the time that you were
20 observing the white car coming down Dunkeld
21 Street towards Officer Paillant?

22 A. I didn't see it coming towards him. I saw it
23 hitting him.

24 Q. At any time prior to your seeing the car hit

1 Officer Paillant, did you change your position
2 with respect to the speed of the car on Fayston
3 Street?

4 MS. LITSAS: Objection.

5 A. I was off the sidewalk in between, like, in the
6 road side, a parked car, I was in that kind of
7 row. He got hit, slammed onto the front of the
8 car and gasped for air.

9 Q. When you saw the white car, did you make any
10 observations of whether or not Officer Paillant
11 was moving in any direction with respect to it
12 as it was approaching him?

13 A. He was moving to his left.

14 Q. And did you have any -- what did you interpret
15 that movement of his to be for?

16 What did you think he was trying to
17 do, in other words?

18 A. Get out of the way.

19 Q. And did you say anything to him at that point?

20 A. No.

21 Q. Did he say anything to you at that point?

22 A. No.

23 Q. We can take a minute break if you want it?

24 A. I'm okay.

1 of it was on Fayston Street?

2 MS. LITSAS: Objection.

3 A. No.

4 Q. Well, why did you change your answer from most
5 of it to all of it to most of it?

6 MS. LITSAS: Objection.

7 A. The incident happened so quickly and the car was
8 moving fast. It depends on what time during
9 this incident, what split second, whether it was
10 on or off on Fayston.

11 Q. The detective didn't change his question with
12 regard to at what point in time, did he?

13 MS. LITSAS: Objection.

14 Q. He simply rephrased the question?

15 MS. LITSAS: Objection.

16 A. Nope.

17 Q. Thank you. Can I have that back?

18 And from where you were standing --
19 strike that. How far away were you -- when you
20 were observing the car strike Officer Paillant,
21 exactly what part of the white Taurus came into
22 contact with what part of Officer Taylor's body?

23 A. The Taurus hit Officer Paillant on the front
24 passenger side of the hood and it struck him

1 A. I don't think I understand the question.

2 Q. If you think about the hood and you divide the
3 car in the middle so there's right side and a
4 left side, and the right side is the passenger
5 side from the middle to the end, right end of
6 the car, the right part of the car, what
7 specific part of the hood came in contact with
8 what specific part of his torso?

9 MS. LITSAS: Objection.

10 A. I don't know.

11 Q. Was it the headlight area?

12 A. I don't know.

13 Q. Was it the right fender? Can you answer that?

14 A. I don't know.

15 Q. Were you able to see with any clarity what
16 actual part of the hood, other than the right
17 passenger part, came in contact with the part of
18 his body?

19 A. It looks like his whole body was on the hood.

20 Q. And for how long -- strike that. What's the
21 next thing that you observed?

22 A. When it was striking him, it was turning onto
23 Fayston and I could see his feet kind of kicking
24 as if he was met with a stronger force and he

1 was trying to keep himself up from being run
2 over. And I can see his hands on the hood and
3 the car was turning.

4 Q. To your knowledge, is this the first time you
5 have ever used the phrase you could see his feet
6 moving as though he was trying to keep something
7 of greater force running over him?

8 MS. LITSAS: Objection.

9 A. I'm sorry, what was that?

10 Q. To your knowledge, is this the first time that
11 you have ever used the phrase kicking in a way
12 as to keep something with greater force from
13 running him over?

14 MS. LITSAS: Objection.

15 A. Is the first time I have ever used that phrase?

16 Q. That you have characterized the contact like
17 that?

18 MS. LITSAS: Objection.

19 A. No, it's not the first time I have used it.

20 Q. And do you recollect any other occasions since
21 2002 that you actually characterized the contact
22 with the vehicle in that fashion?

23 MS. LITSAS: Objection. I would just
24 instruct my client not to answer any

1 Q. So --

2 MS. LITSAS: I renew my objection to
3 the question that was just answered. I again
4 move to strike that answer.

5 Q. What's the next thing that you saw?

6 A. I saw the car turn on, turning onto Fayston.

7 Q. And that's when you started -- you saw the car
8 turning onto Fayston?

9 A. Yes.

10 Q. So how far into the turn on Fayston, was it at
11 the point of contact between officer Paillant
12 and the vehicle?

13 A. I would say it had just begun the turn.

14 Q. Begun the turn. One minute. And so he's
15 kicking and his hands are on the hood trying to
16 stop something of greater force, what happened
17 next?

18 MS. LITSAS: Objection.

19 A. Well, I wouldn't say he was trying to stop it.
20 You can't stop a car. I think he was just
21 trying to keep himself up.

22 Q. What happened next?

23 A. The car was turning onto Fayston.

24 Q. And at that point, did you lose sight of him?

1 A. Yes.

2 Q. And that's when you started shooting, right?

3 MS. LITSAS: Objection.

4 A. That's when I lost sight of him. I raised my
5 arm to shoot, and I could see Mr. Nicholas in
6 the cruiser.

7 MS. LITSAS: I would ask that you let
8 him finish his answer.

9 A. I saw Mr. Nicholas, as my arm is raised and I
10 stepped from the parked cars to the street and I
11 started -- I took a breath.

12 Q. Okay. Time to take a break.

13 A. I took a breath. And I had to aim, I took a
14 breath, and I asked God to be with me.

15 Q. Yes.

16 A. And I started shooting.

17 Q. Let's take a break.

18 THE VIDEOGRAPHER: The time is 2:23.
19 We're off the record.

20 (Recess.)

21 THE VIDEOGRAPHER: The time is 2:30.
22 We are back on the record.

23 Q. Could you read back the last answer, please?

24 (Answer read back as requested.)

1 Q. After Officer Paillant was struck by the
2 vehicle, you lost sight of him, right?

3 MS. LITSAS: Objection.

4 A. At some point, I did lose sight of him.

5 Q. He fell off the hood and back, it was at that
6 point that you lost sight of him?

7 MS. LITSAS: Objection.

8 A. I'm sorry, could you rephrase that?

9 Q. Right. How soon after Officer Paillant, part of
10 his torso landed on the hood did he fall away
11 from the hood?

12 MS. LITSAS: Objection.

13 A. I never saw him fall away from the hood.

14 Q. What exactly, what movement did Officer
15 Paillant's body go through that you saw after
16 he -- after his body hit the hood?

17 MS. LITSAS: Objection.

18 A. I saw his feet kind of kicking. And he was on
19 the hood as the car was turning.

20 Q. And at some point, his body was no longer on the
21 hood, right?

22 MS. LITSAS: Objection.

23 A. I don't know where his body was when the car
24 turned and I lost sight of him.

1 Q. That's what I was trying to ask. And how
2 soon --

3 MS. LITSAS: Objection.

4 Q. After you saw his body strike the hood, how soon
5 after that did you lose sight of him?

6 A. I don't know.

7 Q. Was it a second? Was it two seconds?

8 A. I don't know. It was quick.

9 Q. Was it less than five seconds?

10 MS. LITSAS: Objection.

11 A. I just know it was fast.

12 Q. And was it simultaneously with your losing sight
13 of him that you began -- that you prayed to God
14 and started to shoot?

15 MS. LITSAS: Objection.

16 A. When I lost sight?

17 Q. Yes.

18 A. I raised my arm.

19 Q. Right.

20 A. I could see Mr. Nicholas, I stepped from the
21 parked cars, and that's when I started shooting.

22 Q. When you started shooting, you were looking at
23 the vehicle, right?

24 MS. LITSAS: Objection.

1 A. Which vehicle were you talking about?

2 Q. The white Taurus.

3 A. Yes.

4 Q. And as you were shooting at the white Taurus,
5 the white Taurus was diagonally across the
6 street from you, correct?

7 A. Somewhat.

8 Q. And with what eye or eyes did you see what
9 portion of James Nicholas while you were
10 shooting at the vehicle?

11 MS. LITSAS: Objection.

12 A. Which eye did I see him with?

13 Q. Yes. In other words, did you look to the left,
14 did you look to the right, did you look straight
15 ahead? How did you become aware that
16 Mr. Nicholas was out of the vehicle?

17 A. He wasn't out of the vehicle.

18 MS. LITSAS: Objection.

19 Q. Is it your testimony that prior to actually
20 starting to shoot and after you prayed to God,
21 you looked in James Nicholas' direction?

22 MS. LITSAS: Objection.

23 A. No.

24 Q. In what order did you do those things, did you

1 over like that. That's how I was aiming and I
2 didn't want -- I started stepping forward.

3 Q. How far forward did you step before you
4 discharged the first shot?

5 A. I don't know. I don't know how far forward it
6 was.

7 Q. I would like you to stand up. I wanted a few
8 more questions with regard to that.

9 MS. LITSAS: Again, I'll note my
10 continuing standing objection to the physical
11 demonstration.

12 Q. Now, please put your hand out there. Now, with
13 your arm in that direction with the gun pointing
14 outward, what part of the vehicle, if any, were
15 you attempting to hit aiming straight out as you
16 were up in the air like that, what part?

17 MS. LITSAS: Objection.

18 A. The driver's side.

19 Q. The driver's side. Were you trying to kill the
20 driver?

21 MS. LITSAS: Objection.

22 A. I was trying to disable the driver from driving
23 the vehicle?

24 Q. Is that a procedure that you're taught in

1 connection with the discharge of weapons in a
2 moving vehicle, to shoot to disable the driver?

3 MS. LITSAS: Objection.

4 A. We're not taught to shoot at moving vehicles.
5 We're taught to shoot to stop any force that's
6 greater than yours that may cause you death or
7 serious bodily injury or someone else.

8 Q. And so at that particular point, it was a matter
9 of indifference to you whether you killed the
10 driver?

11 MS. LITSAS: Objection.

12 A. I'm sorry, I don't understand the question.

13 Q. At that point in time, you didn't really care
14 whether you killed the driver or not?

15 MS. LITSAS: Objection.

16 A. No, that's not true.

17 Q. You could have aimed at the tires, right?

18 A. No.

19 MS. LITSAS: Objection.

20 Q. You could have aimed at the inside of the
21 vehicle?

22 MS. LITSAS: Objection.

23 A. I'm sorry, aimed where? You still need me
24 standing up?

1 Q. Yes, I do.

2 A. Okay. Could I aim where?

3 Q. At the inside of the vehicle? I'll strike the
4 question.

5 MS. LITSAS: Objection.

6 Q. You never saw --

7 MS. LITSAS: Andrew, I will ask that
8 he sit down unless you're going to ask him to do
9 any other physical demonstrations.

10 MR. STOCKWELL-ALPERT: Okay, but I may
11 ask him to stand again in time.

12 MS. LITSAS: But to the extent while
13 you're questioning him while he's standing.

14 Q. Okay. You can sit down but I may ask you to get
15 up in a second.

16 MS. LITSAS: Thank you.

17 Q. You had no idea, you hadn't seen any driver of
18 the vehicle at any point, had you?

19 A. No.

20 Q. You hadn't seen any passengers in the vehicle at
21 any point, had you?

22 A. No, I did not.

23 Q. You didn't know how many people were in the
24 vehicle, right?

1 A. No.

2 Q. You didn't know anything about the number or
3 nature of the occupants in the vehicle, did you?

4 A. No.

5 Q. And you had never received any training in other
6 methods of stopping a moving vehicle?

7 MS. LITSAS: Objection.

8 Q. Up to that point, right?

9 A. Can you rephrase that?

10 Q. You had never received any training with regard
11 to methods of stopping a moving vehicle in the
12 use of a firearm, right?

13 MS. LITSAS: Objection.

14 A. No.

15 Q. So this was your split second decision that you
16 made about how you thought it was appropriate to
17 stop this vehicle under the circumstances,
18 right?

19 MS. LITSAS: Objection.

20 A. It was the only decision I had.

21 Q. And it was very important to you to stop this
22 vehicle, right?

23 MS. LITSAS: Objection.

24 A. I would say it was important to save a life.

1 you were involved in different locations doing
2 different things and wanted to talk back and
3 forth with each other?

4 A. Yes.

5 Q. So that would be the same equipment that you
6 could use if you wanted to say, hey, is
7 everything okay, for example?

8 MS. LITSAS: Objection.

9 A. You can use it for that but not in that time
10 frame. It's much too slow.

11 Q. And did you consider the possibility that --
12 strike that.

13 You didn't know at the time you shot
14 whether your partner had actually succeeded in
15 getting out of the way of the vehicle?

16 MS. LITSAS: Objection.

17 Q. After he was struck, right?

18 MS. LITSAS: Objection.

19 A. He didn't get out of the way. He got hit.

20 Q. After he got hit, you are aware that he got up
21 within seconds after that?

22 MS. LITSAS: Objection.

23 A. I'm aware that he did get up.

24 Q. And you don't know what he did, if anything, on

1 his own to make himself safe from being further
2 struck or run over or dragged by the vehicle
3 before you shot at it, did you?

4 MS. LITSAS: Objection.

5 A. No. I don't know where he was. I didn't see
6 him.

7 Q. And so although he might have been having a
8 problem with the vehicle at that point in time,
9 he might have been perfectly safe at the point
10 you started shooting, right?

11 MS. LITSAS: Objection.

12 A. I don't know. That's just, that's a
13 speculation.

14 Q. Well, a woman is dead as a result of your
15 shooting, right?

16 MS. LITSAS: Objection.

17 A. I understand.

18 Q. And the question is did you consider the
19 possibility that maybe you didn't need to shoot
20 because the situation wasn't what you decided it
21 was when you immediately decided to shoot?

22 MS. LITSAS: Objection.

23 A. Everything happened very quickly and we are
24 trained to make decisions in a split second.

1 And if we don't make decisions, people will die,
2 people can die, but if we freeze, things can
3 turn out differently. I didn't know where my
4 partner was at the time and I'm trained to
5 react. I wouldn't be a normal bystander who
6 could stand there and look and not react because
7 that would be a neglect of my duty. I had to
8 react.

9 Q. Wouldn't yelling out to your partner to find out
10 if he was safe kind of reaction that might be
11 more appropriate than immediately shooting?

12 MS. LITSAS: Objection.

13 A. No.

14 Q. Well, as part of your -- strike that.

15 You said you're trained to react
16 quickly in situations, right?

17 A. Yes.

18 Q. But you have never been trained about the
19 situations in which to react at shooting at a
20 moving vehicle, right?

21 MS. LITSAS: Objection.

22 A. When we're trained, they said this is the job
23 from A to Z. You'll be called to do many
24 different things and they're going to teach us a

1 lot of different things in the academy. They
2 said you know what, there's going to be stuff
3 that each one of you that will go through that
4 will be different from what we can tell you.
5 And you have to determine how to handle it.

6 Q. If the same situation occurred today with
7 exactly the same circumstances, sir, surrounding
8 it, would you make exactly the same decision?

9 MS. LITSAS: Objection.

10 A. That's a hypothetical question.

11 Q. I'm asking you a hypothetical.

12 A. I can't answer that, sir.

13 Q. I need to know if you would do it again?

14 MS. LITSAS: Objection. He answered
15 the question.

16 A. I don't know what I would do. It's
17 hypothetical. Do you know what you would do,
18 sir?

19 Q. Well, I'm not the one that killed an innocent
20 person in the vehicle, Officer?

21 MS. LITSAS: Objection.

22 Q. Anyway, so you started shooting, right?

23 A. Yes.

24 Q. Now, at the time that you were interviewed by

1 A. I considered James Nicholas, that's why I
2 stepped into the street instead of firing from
3 standing in the middle of parked cars.

4 Q. So you think you cured the possibility of
5 ricocheting bullets killing James Nicholas
6 because you stepped out into the street?

7 MS. LITSAS: Objection.

8 A. I definitely know I took him out of my sight,
9 out of the picture which would seriously
10 decrease the chances of him getting hit.

11 Q. Well, what data do you have to support your
12 statement that taking him out of the picture
13 meant he was safe from ricocheting bullets?

14 MS. LITSAS: Objection.

15 A. I don't have any data on the ricocheting
16 bullets.

17 Q. In fact, wouldn't it be fair to say your many
18 years as a police officer, you're aware of
19 instances in which drive-by shootings in the
20 streets have resulted in innocent civilians in
21 apartment buildings several stories up being
22 killed by ricocheting bullets?

23 MS. LITSAS: Objection.

24 A. No.

1 Q. But you didn't consider any of that when you
2 opened fire on this vehicle?

3 MS. LITSAS: Objection.

4 A. Of course, I did.

5 Q. And decided it was still okay to shoot, right?

6 MS. LITSAS: Objection.

7 A. I'm shooting to save the life of my partner.

8 Q. And you continued to shoot to save the life of
9 your partner five times, right?

10 MS. LITSAS: Objection.

11 A. I shot until the vehicle appeared to stop.

12 Q. And that was some distance down Fayston Street,
13 right?

14 MS. LITSAS: Objection.

15 A. I don't know how far down it was.

16 Q. But it was down Fayston Street some distance,
17 right?

18 A. It was --

19 MS. LITSAS: Objection.

20 A. -- on Fayston Street.

21 Q. Was it before or after the intersection with
22 Perth?

23 A. Okay, what's the question you're asking?

24 Q. The point at which you decided that you had

1 being shot at and you were not a target, right?

2 MS. LITSAS: Objection.

3 Q. Did you apply that same training to the
4 situation where the vehicle was moving away from
5 you?

6 MS. LITSAS: Objection.

7 A. I applied the training that we were taught. You
8 use it to overcome the force that's being --
9 that you're being met with, and as long as the
10 car is still driving, my partner is still in
11 danger so I shot.

12 Q. Well, let's --

13 A. Until it stopped.

14 Q. Let's talk about that. My understanding from
15 what you told the homicide unit, correct me if
16 I'm wrong, is that the moment you put your gun
17 back down --

18 A. Hm-mmm.

19 Q. -- You saw your partner out of the corner of
20 your eye?

21 A. Correct.

22 Q. So you shot these bullets, okay?

23 A. Mm-hmm.

24 Q. And put the gun down and then you saw your

1 partner?

2 A. Yes.

3 Q. And your partner was getting up?

4 MS. LITSAS: Objection.

5 Q. Right.

6 A. It appeared he was getting up from the ground.

7 Q. Right. And which eye did you see him out of the
8 corner of?

9 A. My right.

10 Q. Which means if I'm not mistaken, that you would
11 have been looking down Fayston Street shooting
12 down Fayston Street?

13 MS. LITSAS: Objection.

14 Q. And then saw your partner out of the corner of
15 your eye, right?

16 MS. LITSAS: Objection.

17 A. I saw him in my peripheral vision.

18 Q. So, would it be fair to say if you had put your
19 gun down before firing a third shot or fourth
20 shot or second shot, you might have been able to
21 determine that your partner was okay before you
22 killed an innocent person?

23 MS. LITSAS: Objection.

24 A. It's not fair to say that.

1 because he went out on the hood of the car and
2 the car was still moving when he disappeared.

3 Q. After he disappeared --

4 MS. LITSAS: Counsel, I would ask you
5 to let him finish his answer.

6 Q. Fine, okay.

7 A. When he disappeared, he would have been on
8 Fayston.

9 Q. And you continued to walk as you were shooting
10 further down Fayston behind the vehicle, right?

11 MS. LITSAS: Objection.

12 A. I don't know how far I walked.

13 Q. Certainly far enough to know that your partner
14 was no longer under the vehicle and being
15 dragged by it while you were shooting, right?

16 MS. LITSAS: Objection.

17 A. Is that a question?

18 Q. Yes.

19 A. No.

20 Q. No? And you said you stopped shooting when you
21 realized that your efforts had succeeded in
22 stopping the vehicle, right?

23 MS. LITSAS: Objection.

24 A. I stopped shooting when the car slowed down and

1 one of the doors opened.

2 Q. Did the doors open on Fayston Street?

3 A. Yes.

4 Q. Did you have any idea if or how many people you
5 killed by that time?

6 MS. LITSAS: Objection.

7 A. I didn't know I killed anyone.

8 Q. Did you see whether or not you shot the rear
9 windshield out of the vehicle at the time?

10 A. Yes.

11 Q. You succeeded in shattering the glass in the
12 windshield, right?

13 A. The rear windshield.

14 Q. Which means a bullet any time you fired after
15 that could have gone straight through the
16 vehicle, right?

17 MS. LITSAS: Objection.

18 A. Just because the rear window was shattered --
19 what are you trying to say?

20 Q. I think you answered the question. And the
21 vehicle turned onto Perth Street?

22 A. I'm sorry.

23 Q. The vehicle turned onto Perth Street, right?

24 A. After the door opened, yes.

1 A. At some point, I saw him getting up.

2 Q. And he ran down the street to follow the
3 vehicle, right?

4 MS. LITSAS: Objection.

5 A. I'm sorry, say that again.

6 Q. He ran down the street, Fayston Street?

7 A. Yes.

8 Q. And when he ran down Fayston Street, was he
9 behind you or ahead of you as you were going
10 down Fayston Street shooting?

11 MS. LITSAS: Objection.

12 A. He was not running when I was shooting.

13 Q. Okay. After you stopped shooting, you saw
14 Officer Paillant running down the street, did he
15 ever catch up with you?

16 MS. LITSAS: Objection.

17 A. After I stopped shooting, Officer Paillant was
18 not running. He was on the ground.

19 Q. And how soon after you made the observation that
20 he was on the ground did he get up?

21 A. As soon as I saw him out of the corner of my
22 eye.

23 Q. You were surprised that he got up so quickly,
24 right?

1 MS. LITSAS: Objection.

2 A. I was surprised he got up.

3 Q. Well, and how soon after he got up did he start
4 running down Fayston Street?

5 A. As soon as he got up.

6 Q. Did he ever catch up with you?

7 A. He was in front of me.

8 Q. How did he get from behind you nearer to the
9 intersection of Fayston and Dunkeld to in front
10 of you?

11 MS. LITSAS: Objection.

12 A. I never said he was behind me or in front of me.
13 The car was always in front of me and I believe
14 he was on the car. I never said --

15 Q. Are you saying the --

16 MS. LITSAS: Counsel, again, could you
17 please let Mr. Officer Taylor answer.

18 A. I never said he was behind me.

19 Q. Well, did you see him carried down Fayston
20 Street on the hood of the vehicle?

21 MS. LITSAS: Objection.

22 A. Did I see him carried down Fayston Street?

23 Q. Was he transported down Fayston Street on the
24 hood of the vehicle?

EXHIBIT I

ORIGINAL

VOLUME I

PAGES: 1 - 92

EXHIBITS: 1 - 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11803-MLW

* * * * *

SHENIA DANCY-STEWART, as
Administratrix of the Estate
of EVELINE BARROS-CEPEDA,
Plaintiffs,

vs.

THOMAS TAYLOR, JR., and the
CITY OF BOSTON,
Defendants.

* * * * *

DEPOSITION OF TREVO CARTER,
taken on behalf of the Defendants, pursuant
to the Massachusetts Rules of Civil
Procedure, before Karen Borreson, RPR, Notary
Public within and for the Commonwealth of
Massachusetts, at the law offices of City of
Boston, City Hall, Boston, Massachusetts, on
Thursday, January 17, 2008, commencing at
2:35 p.m.

G&M COURT REPORTERS, LTD.
1.800.655.3663 - www.gmcourtreporters.com

1 Q. Yes.

2 A. Okay. Um, approximately seven.

3 Q. How did you come to that conclusion?

4 A. I know the street. I know there was no
5 streetlights off.

6 Q. So there were approximately seven
7 streetlights on?

8 A. Yes.

9 Q. At the time that you heard and saw the car
10 coming down the street, you were on the
11 porch?

12 A. I was out on the sidewalk.

13 Q. You were on the sidewalk?

14 A. Yes.

15 Q. And the sidewalk of what street?

16 A. Dunkeld.

17 Q. Where were you located on the sidewalk of
18 Dunkeld Street. Was there a specific
19 numbered house?

20 A. It was Latoya's house and there was new
21 complexes over in between those two.

22 Q. So you were in the vicinity of 5 Dunkeld
23 Street?

24 A. Yes.

1 Q. On the sidewalk?

2 A. Yes.

3 Q. What were you doing on the sidewalk?

4 A. Just talking among people that live on the
5 street.

6 Q. Do you know who you were talking to?

7 A. I didn't know their name. I know them by
8 face. So it was like hi, how are you doing?
9 That was it. Because that I was smoking, so
10 I moved away and finished my cigarette and
11 flicked it.

12 Q. So you were smoking a cigarette outside on
13 the sidewalk?

14 A. Yes.

15 Q. On Dunkeld Street?

16 A. Uh-huh.

17 Q. And the first thing that you heard was the
18 screeching car?

19 A. Uh-huh.

20 Q. And when you heard that, did you look to see
21 what the cause of it was?

22 MR. STOCKWELL-ALPERT: Objection.

23 A. I really didn't pay most mind to it, because
24 Dunkeld -- kids in cars do dumb things. So

1 you hear a car screeching, you look and look
2 away. That was it.

3 Q. Did you see anything when you heard the
4 screeching car?

5 A. Just thought -- just the car come on to
6 Dunkeld, yes.

7 Q. What's the next thing that happened?

8 A. It accelerated up the street, I know that.

9 Q. Can you describe for me what happened next?

10 A. Um, there was two other police officers on
11 Fayston. I don't know if they was there for
12 any other reason. I don't know what reason
13 they were there for. They were visiting
14 another house. I'm not sure what house it
15 was. And, um, as the car was accelerating
16 up the street. One cop was outside already
17 and he was in the middle of the street
18 telling the other car to stop. The car
19 wouldn't stop.

20 Q. And then what happened?

21 A. The right side of the hood of the car hit
22 the cop and he went onto his other side, off
23 to the side.

24 Q. What happens when the car hits the cop?

1 Q. Followed by a police cruiser?

2 A. Yes.

3 Q. And what happens next after the car
4 accelerates?

5 A. The car -- the cop got hit. Um, out of view
6 for me as he got hit. He didn't fly in the
7 air.

8 MR. STOCKWELL-ALPERT: I didn't hear
9 that.

10 A. He was out of view for me, because the other
11 cars were parked in the street. He didn't
12 fly in the air. He wasn't a hit like he got
13 flipped in the air. So I couldn't see after
14 that. I knew he went to the ground,
15 obviously, and the car went right around
16 him. Went around where he was at and went
17 on to Fayston.

18 Q. What hits the officer?

19 A. The car.

20 Q. The same car that's the screeching car?

21 A. Yes.

22 Q. And what part of the car hits the officer?

23 And what I'm asking you is it the driver's
24 side or the front seat passenger side, if

1 you can identify it that way?

2 A. I believe it was the passenger side.

3 Q. So that would be the right side of the car?

4 A. Yes.

5 Q. Do you hear anything when the car hits the
6 officer?

7 A. No.

8 Q. Do you hear the officer's body or belt
9 collide with the vehicle?

10 MR. STOCKWELL-ALPERT: Objection.

11 A. No. I'm sorry.

12 Q. Do you see the officer go on top of the hood
13 of the car?

14 A. Not the whole hood.

15 MR. STOCKWELL-ALPERT: Objection.

16 Q. I'm sorry, so what did you see happen to the
17 officer?

18 A. He didn't hit like the hood -- not the whole
19 hood, just the side of the hood, like, where
20 the light ares is that, the front of
21 headlight, that area.

22 Q. What part of the officer's body collides
23 with that part of the hood?

24 A. I believe the left side. No, no. I'm

1 Q. -- onto the vehicle?

2 MR. STOCKWELL-ALPERT: Objection.

3 A. Yes.

4 Q. What direction is the officer move into upon
5 impact?

6 A. Meaning like?

7 Q. What direction does the officer's body move
8 into at the time of the impact of the
9 vehicle?

10 A. Moves towards -- he moves towards the right.
11 The car is coming up and he moves over to
12 the right.

13 Q. I guess my question is: When the vehicle
14 hits the officer --

15 A. Uh-huh.

16 Q. -- does the officer's body move forward
17 towards the vehicle?

18 A. Yes.

19 MR. STOCKWELL-ALPERT: Objection.

20 Q. So upon impact of the vehicle, which
21 direction does the officer's body move
22 towards?

23 MR. STOCKWELL-ALPERT: Objection.

24 A. Say that again, I'm sorry.

EXHIBIT J

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MASSACHUSETTS

Civil Action

ORIGINAL

Case No. 05-11803-MLW

* * * * *

SHENIA DANCY-STEWART AS *

ADMINISTRATRIX OF THE ESTATE OF *

EVELINE BARROS-CEPEDA *

-v- *

THOMAS TAYLOR, JR., AND THE *

CITY OF BOSTON *

* * * * *

DEPOSITION OF JAMES NICOLAS

Examination taken at the Offices of the City
Solicitor, One City Hall Plaza, Elm Street,
Manchester, New Hampshire, on Tuesday, January 15,
2008, commencing at 11:45 a.m.

Court Reporter:

Elaine J. Ritsema, CCR, RPR

CCR No. 92 (RSA 331-B)

1 that's the house. That was the house. The car
2 (indicating) --

3 Q. Okay. Why don't you mark an X where the
4 house was that you were -- where you were in the car,
5 in the police cruiser. Can you just mark an X so that
6 we can understand what your testimony is when you --
7 when you are drawing this and when we read this
8 transcript.

9 So why don't we do this --

10 A. I'm bad in drawing. It's better for me
11 to talk about it and then -- you know, me drawing, to
12 be honest with you. 'Cause me drawing something, you
13 know -- 'cause I already swear an oath. What about if
14 I draw something and it's not the right way, you know,
15 the street look like?

16 (Speakers overlap)

17 Q. We understand that. We're only asking
18 you to do the best of your ability. Why don't you
19 tell me what happened; and then if we need to draw it,
20 we can do that.

21 A. Thank you.

22 Q. Okay.

23 A. When I was -- like I said, when I was in
24 the car after he finish talk to me or whatever, you

1 know, after the lady -- you know what I'm saying --
2 see my face, it wasn't me, he was about to let me go.

3 But it was a car who was speeding. It
4 was going fast. I don't remember exactly if they hit
5 him on his leg, you know; but the car almost take his
6 leg off.

7 So the officer who was with me, I didn't
8 see him do any shooting. Okay? If I told you I see
9 him shoot, shoot anybody, I be lying to you. I didn't
10 see him do any shooting. But I do hear the shotgun.
11 I do hear the shotgun and everything.

12 So it was -- and after -- after --
13 actually, it was another car, too, who was chasing
14 that car --

15 Q. And what --

16 A. -- you know, the officer. The cruiser
17 who was chasing that car.

18 Q. Mm-hmm.

19 A. So it was like everything happened so
20 fast, you know; and it was like after all that
21 happened, I was still --

22 (Reporter asks to repeat)

23 A. I was still in the same street. 'Cause
24 after that shooting or whatever it is, I couldn't go

1 nothing like that.

2 Q. When did you hear the gunfire,
3 Mr. Nicolas?

4 A. Actually, it was when the car passing by
5 to be honest with you, if I remember exactly hundred
6 percent. That was when the car passed by. After the
7 car passed by because I was in the back of the car.

8 (Reporter asks to repeat)

9 A. It's not like I could just get out to
10 see, you know, what color the car was or nothing like
11 that. The only thing I know after the lady see it
12 wasn't me or the officer was trying to speak to me, he
13 was going to try to let me go, you know, that didn't
14 happen; and I have to stay there for longer, longer,
15 longer, longer time.

16 And on top of that and have I have to go
17 to the headquarters, you know, for two people -- you
18 know what I'm saying -- and just like, you know,
19 question me about this situation when that wasn't my
20 mess, when I didn't have nothing to do with that
21 situation.

22 Q. Mr. Nicolas, when you were in the back
23 seat of the police cruiser, were you -- do you
24 remember if you remember sitting on the right or the

1 left of the back seat in the cruiser?

2 A. If I refresh my memory, if the officer
3 was right here (indicating) and the house was right
4 here, so I probably was sitting right here. Because
5 how the lady was gonna see my face?

6 So I'm not sure if it was -- I don't
7 think I was sitting in the same -- you know, like in
8 the same -- like you know where the officer drive?
9 Like this is the passenger -- those --

10 (Reporter asks witness to speak slower)

11 A. I don't remember exactly if I was in the
12 left or I was in the right. I'm just aggravated with
13 this whole thing, you know.

14 MS. LITSAS: Can we go off the record.

15 (Discussion off the record)

16 MS. LITSAS: Back on the record.

17 BY MS. LITSAS:

18 Q. Mr. Nicolas, you were sitting in the
19 back seat of the cruiser?

20 A. Yes.

21 Q. Okay. Were you sitting behind the
22 driver or the passenger?

23 A. That I know. I was in -- behind the
24 driver.

EXHIBIT K

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SHENIA DANCY-STEWART as Administratrix
of the Estate of EVELINE BARROS-CEPEDA,
Plaintiff

v.

THOMAS TAYLOR, Jr., and the
CITY OF BOSTON
Defendants

Civil Action

Docket No. 05-11803MLW

**PLAINTIFFS' THIRD
AMENDED COMPLAINT
AND JURY TRIAL DEMAND**

INTRODUCTION

1. This is an action for monetary damages brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth Amendment to the United States Constitution against Thomas Taylor, Jr., (hereinafter, "Officer Taylor"), a police officer of the City of Boston, in his individual capacity and against the City of Boston. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343 and on the pendent jurisdiction of this Court to entertain claims arising under state law.

2.. It is alleged that Officer Taylor shot and killed Eveline Barros-Cepeda without legal cause or excuse and made an unreasonable seizure of her person, violating her rights under the Fourth Amendments to the United States Constitution and Article XIV of the Massachusetts Declaration of Rights. It is further alleged that these violations were committed as a result of policies and customs of the City of Boston.

PARTIES

3. Eveline Barros-Cepeda, (hereinafter, Ms. Barros-Cepeda) was a black Cape Verdian who, at all times material to this complaint, lived in Dorchester, Massachusetts with her mother, Domingas DePina.. Ms. Barros-Cepeda was only twenty-five years old when she was shot and

killed by Defendant Officer Taylor. She left behind her husband, Carlos Cepeda and her two year old son, Nazee Barros-Cepeda. Domingas DePina, her mother, sought to be and was subsequently appointed legal guardian of Nazee Barros-Cepeda. She has been caring for him since he lost his mother.

4. Plaintiff, Shenja Dancy-Stewart, (hereinafter, "Ms. Dancy-Stewart") is the Administratrix of the Estate of Ms. Barros-Cepeda by appointment of the Suffolk Probate & Family Court.

5 Defendant, Thomas Taylor, Jr., (hereinafter, "Officer Taylor") is and was, at all times material to this complaint, a duly appointed and acting police officer of the police department of the City of Boston, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the Commonwealth of Massachusetts and/or the City of Boston..

6 Defendant, City of Boston, is a municipal corporation, duly organized under the laws of the Commonwealth of Massachusetts and located in Suffolk County. The City of Boston is the public employer of Defendant Officer Taylor.

FACTUAL ALLEGATIONS

7 On September 8, 2002, at around 12:30 A.M., Ms. Barros-Cepeda was a passenger in the rear seat of a motor vehicle being operated on Dunkel Street towards Fayston Street in Dorchester, Massachusetts.

8. At that same time, Officer Taylor was on foot at the intersection of Dunkel and Fayston Street.

9. When the motor vehicle turned onto Fayston Street, Defendant Officer Taylor temporarily lost sight of a fellow police officer who had been standing across the street from him. Without first doing anything to verify that the other police officer had been or was being

injured by the motor vehicle, Defendant Officer Taylor drew his service revolver and shot at least three bullets in the general direction of the vehicle and its operator.

10. Defendant Officer Taylor's firing at the operator and the motor vehicle under the circumstances violated the then-existing policies of the City of Boston police department on the use of deadly force.

11. There was no threat to Defendant Officer Taylor's life or safety from either the vehicle or any of its occupants.

12. Defendant Officer Taylor had no knowledge of and did not observe anything that would lead him to believe that anyone in the vehicle was armed or dangerous.

13. Defendant Officer Taylor had no prior knowledge and did not observe anything that would lead him to believe that anyone in the vehicle had been or was presently involved in any criminal wrongdoing.

14. Defendant Officer Taylor knew or should have known that he had little or no likelihood of hitting the driver or otherwise bringing the vehicle to a stop by shooting at it and a strong likelihood of causing injury or death to its passengers, bystanders and building residents.

15. One bullet passed through both the vehicle and Ms. Barros-Cepeda's body but did not immediately kill her. She was subsequently pronounced dead at the hospital. A copy of the death certificate is annexed hereto as "Exhibit A".

16. As a direct and proximate result of the acts of Defendant Officer Taylor, Ms. Barros-Cepeda suffered the following injuries and damages:

a) Violation of her constitutional rights under the Fourth Amendment to the United States Constitution to be free from an unreasonable seizure of her person;

b) Loss of her life;

- c) Physical pain and suffering and emotional trauma and suffering.
 - d) Funeral expenses.
17. Nazee Barros-Cepeda has suffered the untimely end of his relationship with his mother, with the corresponding loss of her love, care, affection, nurturing, companionship guidance, advice, assistance and financial and emotional support.
18. Carlos Cepeda has suffered the untimely end of his relationship with his spouse, with the corresponding loss of her services, affection, assistance, society, companionship, comfort, advice and guidance.
19. The actions of Defendant Officer Taylor violated Ms. Barros-Cepeda's clearly established and well settled federal constitutional right of freedom from the unreasonable seizure of her person.

COUNT I 42 U.S.C. §1983 - WRONGFUL DEATH – Officer Taylor

- 20 Paragraphs 1–19 are incorporated herein by reference as though fully set forth.
21. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant Officer Taylor for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses under 42 U.S.C. §1983.

COUNT II 42 U.S.C. §1983 - SURVIVAL ACTION – Officer Taylor

22. Paragraphs 1–21 are incorporated herein by reference as though fully set forth.
23. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.
24. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the

Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

25. Plaintiff, Ms. Dancy-Stewart, claims damages against Officer Taylor for the conscious pain and suffering and necessary medical expenses incurred by Eveline Barros-Cepeda, under 42 U.S.C. §1983.

COUNT III 42 U.S.C. §1983 – MUNICIPAL LIABILITY – City of Boston

26. Paragraphs 1–25 are incorporated herein by reference as though fully set forth.

27. Prior to September 8, 2002, the City of Boston developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in Boston, which caused the violation of Ms. Barros-Cepeda's rights.

28. It was the policy and/or custom of the City of Boston to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of Boston, including but not limited to the unlawful, unreasonable and unjustified stopping of moving vehicles by shooting at them and the people inside them.

29. It was the policy and/or custom of the City of Boston to inadequately supervise and train its police officers, including the Defendant Taylor, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City did not require appropriate in-service training or re-training of officers who were known to have engaged in police misconduct.

30. As a result of the policies and customs, police officers of the City of Boston, including the Defendant Taylor, believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

31. A Suffolk County Grand Jury returned no indictment against Defendant Officer Taylor for the unjustified, unlawful killing of Ms. Barros-Cepeda and he was neither disciplined nor

ordered to receive additional training in the discharge of firearms. In fact, in a press conference following the Grand Jury investigation, Suffolk County District Attorney Daniel Conley blamed the "unfortunate" death of Ms. Barros-Cepeda on the operator of the motor vehicle. Shortly thereafter, however, Boston Police Commissioner Paul Evans announced a change in the policy of the Boston Police Department regarding the discharge of firearms at moving vehicles.

32. The aforementioned policies and customs demonstrated a deliberate indifference on the part of policymakers of the City of Boston to the constitutional rights of persons within the City, and were the cause of the violations of Ms. Barros-Cepeda's rights alleged herein.

COUNT IV – VIOLATION OF M.G.L. c.229 – WRONGFUL DEATH – Officer Taylor

33. Paragraphs 1–32 are incorporated herein by reference as though fully set forth.

34. Defendant Officer Taylor's shooting at the moving vehicle was deliberate and willful and in total disregard for the lives and safety of any of the passengers within it.

35. As a direct and proximate result thereof, Ms. Barros-Cepeda suffered the loss of her life.

36. Plaintiff, Ms. Dancy-Stewart, claims damages against defendant Officer Taylor for the Estate of Ms. Barros-Cepeda for her wrongful death and for the loss of her income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel and advice and for funeral expenses.

COUNT V SURVIVAL ACTION – City of Boston

37. Paragraphs 1–36 are incorporated herein by reference as though fully set forth.

38. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.

39. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

40. Plaintiff, Ms. Dancy-Stewart, claims damages against the defendant City of Boston for the conscious pain and suffering and necessary medical expenses incurred by Ms. Barros-Cepeda.

COUNT VI SURVIVAL ACTION – Officer Taylor

41. Paragraphs 1–40 are incorporated herein by reference as though fully set forth.

42. Ms. Barros-Cepeda was forced to endure great conscious pain and suffering and to incur expenses for the medical treatment she received prior to her death.

43. Ms. Barros-Cepeda filed no action during her lifetime, but under the laws of the Commonwealth of Massachusetts, this action survives and may be asserted by her Estate.

44. Plaintiff, Ms. Dancy-Stewart, claims damages against the defendant Officer Taylor for the conscious pain and suffering and necessary medical expenses incurred by Ms. Barros-Cepeda.

PRAYER FOR RELIEF

The Plaintiff pray that this Honorable Court:

- a) Enter judgment in her favor on each and every count of this Complaint, and,
- b) Award compensatory damages, and;
- c) Award punitive damages against defendant Officer Taylor: and;
- d) Award the costs of this action, including reasonable attorney fees pursuant to 42 U.S.C. §1988 and M.G.L. c. 12, §111, and,
- e) Award costs and interest, and;
- f) Award such other and further relief as this Court may deem appropriate.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
For the Plaintiff Shenia Dancy-Stewart, Administratrix

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EXHIBIT L

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11803-MLW

SHENIA DANCY-STEWART as
Administratrix of the Estate of EVELINE
BARROS-CEPEDA,
Plaintiffs,

v.

THOMAS TAYLOR, Jr., and the CITY
OF BOSTON,
Defendants.

AFFIDAVIT OF ELIZABETH ZIOLKOWSKI

I, ELIZABETH ZIOLKOWSKI, do hereby on oath depose the following:

1. I have been employed by the Boston Police Department as a Senior Criminalist since 1994.
2. In this capacity, I serve as the supervisor of the Trace Evidence Section and am responsible for the quality of all trace evidence casework, for the quality assurance and control of all the equipment in the section (Py-GC/MS, FTIR, microspec, GRIM2, SEM/EDXA, microscopes and accessories), for writing and putting into effect the standard operating procedures, for occasionally applying for grants for new equipment, for training new personnel, and for planning for the future needs of the section.
3. My general duties in the laboratory include testifying in court, processing crime scenes, performing casework in several disciplines, including debris and polymer analysis, general criminalistics, bloodstain pattern analysis, toolmark comparisons, footwear comparisons, glass, fiber, paint, hair, gunshot residue, tape, and serological screening techniques, performing nine proficiency tests/year (fiber, hair, glass, paint, gunshot residue distance determination, toolmark, footwear, serological screening, and bloodstain pattern analysis), and supervising/performing research as necessary.
4. I have attached hereto as Exhibit A my curriculum vitae for further information about my professional and educational background.
5. In my capacity as a Senior Criminalist for the Boston Police Department, I examined evidence related to the September 8, 2002 shooting.

6. On September 11, 2002, I along with Forensic Technologist Amy Kraatz, assisted in the processing of a white 4-door Ford Taurus, license plate number 5742PE, at Boston Police Department Headquarters under the direction of Sgt. Det. Wyse.
7. During this processing, I examined, among other items, long black scrapes on the passenger's side doors and black scrapes/swipes on the right front of the white Taurus extending from the headlight along the hood to the windshield.
8. In addition, I performed a gel lift of the black scrapes from the hood of the white Taurus and catalogued these gel lifts as Items 15, 16, and 17.
9. A gel lift consists of an adhesive gel on a plastic backing with a clear protective cover. Gel lifts are used to collect various types of evidence, such as impressions or trace.
10. On September 12, 2002, Detective Russell Grant submitted several clothing and equipment items, including Items 28 and 30
11. Item 28 consisted of navy blue police pants labeled "LawPro Quartermaster UnifoiLus &. Equipment...size 36," with a lighter blue stripe on the outer side of each leg.
12. I examined Item 28 and determined that there was damage to the pants, including a dirt/dust mark measuring approximately 30 by 2.5 centimeters running on the rear left leg from behind the knee area towards the hem.
13. I also observed three areas of fabric damage on the pants. On the front left upper leg I observed an abrasion that penetrates the fabric creating a hole about 0.5 centimeter long. On the rear left leg towards the inseam below the seat area I observed a jagged hole measuring approximately 2 centimeters by 1 centimeter, and on the lower rear left leg I observed an abraded area covering approximately 2 centimeters by 0.5 centimeters penetrating one layer of fabric about 2.9 centimeters from the bottom edge of the pants. A clear and slightly shiny deposit also surrounded the abrasion.
14. Item 30 consisted of one black leather police belt labeled "Strong B730-36" with the following attachments:
 1. Leather gun holster (empty);
 2. Snapped leather loop with black plastic loop;
 3. Two leather bands marked "Say-Pee" snapped together around belt;
 4. Plastic black cylindrical holder (empty) marked "Monadnock";
 5. One leather pepper spray holder with canister;
 6. One cloth radio holder (empty) labeled "Motorola"; and
 7. One leather ammunition holder marked "Gould & Goodrich ERG" containing two clips with bullets.

15. I examined Item 30 and determined that there was damage to the gun belt and accessories, including, among other things, indentations on one end of the belt, scratches and scrapes on the gun holster (1), scratches and a whitish deposit on the plastic black cylindrical holder (4), and scratches and a whitish deposit on the exterior leather of the belt.
16. After examining Item 30, I obtained a control sample from the belt exterior, and from attachments 1 and 4 to conduct further testing, including a debris and polymer analysis.
17. When I conduct a debris and polymer analysis, I examine the physical properties and chemical composition of the item's materials.
18. As a result of this testing, I determined that the black lines from Items 16 and 17 located on the hood of the Taurus and the control sample from the bottom of Officer Paillant's holster from Item 30 were all found to contain a black polymer consistent in all measured physical and microscopic properties and chemical composition.
19. In my opinion, based on a reasonable degree of scientific certainty and after examining and comparing these items visually, microscopically, and instrumentally using a stereoscope and FTIR, the black lines from Items 16 and 17, which were located on the white Taurus, and control sample from the bottom of Officer Paillant's holster, could have come from the same source.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 30th
DAY OF MAY IN THE YEAR 2008.

/s/ Elizabeth Ziolkowski

Elizabeth Ziolkowski

EXHIBIT M

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL BUSINESS
No. SUCR02-11321

* * * * *
COMMONWEALTH OF MASSACHUSETTS
V.
BRIMA WURIE
* * * * *

Before: Staffier Holtz, J.
Suffolk Superior Court
Boston, Massachusetts
Date: Friday, May 12, 2006

CHANGE OF PLEA

Ellen Roscoe
Court Reporter

APPEARANCES:

ASSISTANT DISTRICT ATTORNEY MASSAI-MALIEK KING on behalf of
the Commonwealth

CHRISTOPHER P. BELEZOS, ESQUIRE on behalf of the Defendant

ALSO PRESENT:

Margaret Thompson on behalf of the Probation Department

1 THE CLERK: At this time, Your Honor, we have
2 before the Court the matter of Brima Wurie, Docket No.
3 2002-11321. 001, He's charged with accessory after the
4 fact to assault by means of a dangerous weapon; 002, he's
5 charged with accessory after the fact possession of a
6 firearm; 003, he's charged with operating a motor vehicle
7 without being licensed; 004, he's charged with operating a
8 motor vehicle so that the lives and safety of the public
9 might be in danger; 005, he's charged with operating a
10 motor vehicle and going away after causing injury to a
11 person; 006, he's charged with assault and battery by means
12 of a dangerous weapon.

13 Representing the Defendant is Attorney Chris
14 Belezos. Representing the Commonwealth, Assistant District
15 Attorney Massai King. Mr. King wishes to address the
16 Court.

17 MR. KING: Good morning, Your Honor. The
18 Defendant and the Commonwealth are here because we've
19 reached a plea agreement with respect to the six
20 indictments before the Court. The only thing that we are
21 in disagreement about are the terms of probation.

22 THE COURT: Okay. Do I have his record?

23 THE CLERK: Margaret Thompson is the probation
24 officer.

1 THE PROBATION OFFICER: Hello, Your Honor.

2 THE COURT: Okay. Just so the terms of probation
3 make some sense to me, first tell me a little bit about the
4 case.

5 MR. KING: Sure, Your Honor. A brief summary of
6 the facts that on September the 8th of the year 2002, about
7 1:30 a.m., Officers Flaherty and Connolly were in a marked
8 Boston Police cruiser near a park at Columbia Road at a red
9 light facing outbound at the intersection of Hancock
10 Street.

11 While parked there, they observed a white Ford
12 Taurus drive through that intersection and turn right onto
13 Columbia Road. They observed the operator then drove over
14 an island at the location and turned left on Columbia Road,
15 changing his direction so he's now headed in the same
16 direction as the officers, outbound.

17 THE COURT: Can I just interrupt you for a
18 minute. You're going to read through all those facts when
19 we do the colloquy. I'm just more interested just so we
20 can, at least on the probation part, get a sense how those
21 terms connect to the crimes he's pleading to.

22 MR. KING: Certainly, Judge. In short, Your
23 Honor, Mr. Wurie was in a car with four other individuals.
24 All the other individuals were -- some of them were

1 related, some of them weren't.

2 There was a shooting that happened near Fayston
3 Street and Jerome Avenue. Mr. Wurie was seen driving this
4 white Ford Taurus shortly thereafter. There was a traffic
5 violation, the officers attempted to stop that car that led
6 them on a slow-speed chase until they reached -- they drove
7 down Magnolia, I believe, until almost Dunkeld Street.

8 The officers did have their lights and sirens at
9 that point. They reached 76 -- whatever the address is on
10 that street. I apologize. The car then accelerated to a
11 rapid amount of speed.

12 Another officer who was in that area on an
13 unrelated matter saw the lights and sirens, heard them, saw
14 the white Taurus coming down the street in his direction.
15 He was a uniformed officer, attempted to stop the white
16 Taurus that Mr. Wurie was operating, put his hand up,
17 shouted his command. The car continued to accelerate.

18 That officer, Officer Paillant, then drew
19 his service weapon at the car. The car continued to come
20 at Officer Paillant and struck Officer Paillant on the
21 right front passenger side of the car. Officer Paillant
22 went over the hood of the car onto near where the front
23 passenger tire was as the car was turning.

24 Officer Paillant's partner, Officer Taylor, saw

1 this
2 happening, saw his partner disappear, assumed he was being
3 dragged under the car as the car fled down Dunkeld Street.
4 Officer Taylor discharged his firearm at that car as it was
5 fleeing. His discharged shot did cause the death of the
6 rear middle passenger of that car.

7 All the occupants of the car, at that point,
8 continued on. They fled the car and they were eventually
9 apprehended. And these are the charges. The reason for
10 the probation --

11 THE COURT: Who are these people? Are these co-
12 defendants?

13 MR. KING: No one was charged in this case, Your
14 Honor, except Mr. Wurie. But, Mr. Wurie lives on 51
15 Speedwell Street. 51 Speedwell Street is adjacent to
16 Hamilton Street. Hamilton Street, that area, is a very,
17 shall we say, hot area of the City of Boston at this point.
18 There was just a homicide at 196 Hamilton Street this past
19 weekend. There have been several shootings at that house.
20 That's been part of -- There's been known to be some gang
21 activity between that area, CVO, and Wendover Street
22 individuals.

23 Part of the terms and conditions of probation
24 that the Commonwealth is seeking, some of the known

1 associates, or alleged associates of Mr. Wurie, some of the
2 individuals that have been involved in some of the violence
3 that has been going on.

4 THE COURT: These various Fernandeses?

5 MR. KING: That's correct, Your Honor. We're
6 attempting to stem that by keeping Mr. Wurie separate from
7 those individuals.

8 THE COURT: And these are all people -- none of
9 these people have been -- these are not -- obviously,
10 they're not victims, they're just people that you describe
11 as, not ne'er-do-wells, but just people you think are
12 unsavory or somehow --

13 MR. KING: I believe three of those individuals
14 are in custody, people who have been known to frequent that
15 area, the Hamilton Street area, who have been involved in
16 some criminal activity themselves.

17 THE COURT: Okay. Well, let me -- And what do
18 you object to? I should have asked you that first so I
19 know what the areas of disagreement are.

20 MR. BELEZOS: Your Honor, I object to the stay-
21 away. The only party who was involved in the case before
22 you is Carlos Fernandes. Carlos Fernandes is the gentleman
23 who allegedly fired the shot for which Mr. Wurie is charged
24 as an accessory after the fact. Mr. Fernandes,

1 interestingly enough, was never charged for that alleged
2 shooting.

3 So, I can understand there might be some
4 connection between this particular crime and a stay-away
5 from Carlos Fernandes. As far as the rest of these people,
6 Your Honor, I'm objecting to that. I'd also object to a
7 curfew situation with Mr. Wurie.

8 There's a lot that went on in this case -- What
9 I'm asking for probation, Your Honor, is two years
10 probation, one year to be supervised. If the Defendant is
11 in compliance with that probation, then the second year to
12 be unsupervised.

13 In addition, Your Honor, it is the hope of Mr.
14 Wurie and his mother, who's here in court today -- And his
15 family's been with him throughout this case as well as
16 other cases, which we can get into in a bit. What the
17 family's hoping is to allow Mr. Wurie to move to Florida.
18 He has a sister who has a home in Florida, there is work
19 lined up for him down in Florida, and we are anxious,
20 because of all the things that Mr. King noted, to have Mr.
21 Wurie out of Boston. It would be safest for him and, I
22 suggest, safest for all parties involved if he were to be
23 able to get out of here.

24 I don't want to put a pile of conditions on him

1 with all sorts of other people, some of which he grew up
2 with, some of which are almost like family. The DoSouto --
3 not the DoSouto family, but the Deburgo family is almost
4 like a family to him. The Fernandes family. Not Carlos,
5 but Mike Fernandes who's on that list who's not on
6 probation or parole in any way, except I happen to know him
7 as someone that essentially grew up with his family, a
8 stone's throw from his house.

9 So, I don't want to put a bunch of conditions on
10 him where, you know, he's in front of his house and talking
11 to his neighbors and all of a sudden he's back before this
12 Court facing a significant felony on probation violation.

13 THE COURT: Right. I understand.

14 MR. BELEZOS: Can I give the Court his
15 background? I don't want to --

16 THE COURT: No. I just want to get a flavor of
17 the conditions and what the concerns are. I will tell you
18 that based on -- I commend the creativity in the
19 Commonwealth's request, but I have to say I would not --
20 These are not victims, these are not people who are known
21 Confederates. I don't think it's appropriate for me by
22 judicial fiat --

23 MR. KING: Known Confederates, Judge?

24 THE COURT: Yeah. Of the Defendant. That they

1 were defendants in this case, co-defendants. I don't think
2 that -- I'm just telling you what I'm going to do, so you
3 don't have -- I just am not going to tell him -- I mean,
4 I think he should use his own common sense. If these are
5 people who are not good for him, he should stay away from
6 them. But, I'm not, by judicial fiat, going to order the
7 Defendant who to associate with and not associate with
8 based on what I've heard.

9 And similarly, on the curfew, I would not be
10 inclined to issue a curfew that onerous in nature that he
11 just -- I think he can only go to work, school, or medical
12 emergencies. If he does his time and he's otherwise in
13 compliance, I don't know why the Defendant, then
14 Probationer, ought not be able to go to a movie or go to a
15 mall or something like that. So, I would not apply a
16 curfew.

17 With regard to the suggestion that there be two
18 years probation, one be supervised and the other
19 unsupervised, I wouldn't do that. I certainly would -- If
20 he has a year under his belt -- we can put as a condition
21 that it could be reviewable at the one-year anniversary,
22 and if Probation felt that he was absolute, flying colors,
23 not a problem in the world, he would be certainly free to
24 make that pitch to the judge, and maybe even the

1 Commonwealth would not even oppose it. Maybe he's in
2 Florida, and he's doing great, what have you.

3 But, I wouldn't make it one year supervised and
4 the second year unsupervised. And it will be two years
5 supervised, but I will, given your request, I would make it
6 reviewable on a year. That's between him and Probation.

7 MR. BELEZOS: Thank you, Judge. I appreciate
8 that.

9 THE COURT: Let Probation decide how they feel at
10 that point, what his performance has been, and if there are
11 concerns --

12 MR. BELEZOS: Petition the Court to certainly re-
13 hear that issue in a year.

14 THE COURT: Yeah. Come into the First Session
15 and that would be so indicated that that issue of whether
16 further supervision is appropriate. It might be self-
17 evident, depending on what he's doing or where he is in his
18 life. That usually is the case.

19 MR. BELEZOS: Sure. There is one other issue
20 with probation, Your Honor. We discussed it briefly with
21 Probation. Mr. King and I are in complete agreement that
22 it would be best for Mr. Wurie to be able to leave the
23 state. The difficulty is the review process for the
24 interstate compact can take five to six months, is what I'm

1 being told. It is possible to give the Defendant a 30-day
2 pass to go, if he has a house set up and we can prove all
3 this to Probation. Probation is reluctant, obviously, for
4 good policy reasons, to issue multiple passes.

5 I'm of the feeling, and I believe Mr. King's of
6 the feeling, it would be best for Mr. Wurie not to be
7 around this summer, given all that's going on. But, I
8 don't want to put Probation in a position where they're
9 doing something that they're not willing to do. Probation
10 indicated that they'd be willing to do it if the Court
11 would be willing to indicate to them that that would be an
12 appropriate manner of supervision and to allow him --

13 THE COURT: Well, I think that you've kind of
14 given me a lot of "ifs". If those things all happen, then
15 I think you can come back before the Court and say he does
16 have the job, he does have the housing. And I don't think
17 that's unreasonable. But, at this point, I think once he
18 lines up his ducks, that certainly sounds like that would
19 be a workable model, because that addresses the
20 Commonwealth's concern that he just get away from the
21 danger and the crowd that he probably maybe shouldn't be
22 hanging around with. But, I have to have that formally
23 presented to me.

24 MR. BELEZOS: Thank you. Would the Court hold on

1 to it, would it go to the First Session?

2 THE COURT: I'd probably say probably just go to
3 the First Session because if I'm not in the county, then it
4 just slows things down. And I can't imagine that a First
5 Session judge would have a problem with that. There's no
6 opposition. Probation is, in principle, not concerned
7 about that model.

8 THE PROBATION OFFICER: I think that the issue
9 becomes that the permits that we can give are 30-day
10 permits, and I've seen in the past that that has not worked
11 well.

12 The person is basically unsupervised in Florida,
13 or wherever state they're going to. They then have to
14 report back to the Probation Office every 30 days. It
15 becomes expensive, and more times than not it just doesn't
16 happen and it doesn't work and we end up issuing warrants
17 because people do fail to return.

18 And so, the process is that he would reside at
19 whatever address, if it's the Speedwell address, and it
20 would be assigned to an officer. It would immediately go
21 to the interstate compact to Florida, but the process can
22 be lengthy.

23 THE COURT: Well, I don't have something before
24 me now. He doesn't have a problem yet. There's an

1 anticipation of that. Certainly, if you want to find me,
2 that's fine, but I'm not going to formally keep
3 jurisdiction of it. But, I can't imagine that -- It
4 sounds to me like it's what the Commonwealth wants is him
5 not in among that part of the city. So, it's just a
6 question of logistics. But, once you get that all lined
7 up, you should deal with it.

8 MR. BELEZOS: Thank you.

9 THE COURT: All right. So, are we ready to go?

10 THE CLERK: Your Honor, I note that on the three
11 and a day, it's time served. Is that correct, counsel?

12 MR. KING: That's correct.

13 THE CLERK: It's not noted on there.

14 MR. BELEZOS: Your Honor, he's actually served --

15 THE COURT: I assumed that he's --

16 MR. BELEZOS: -- by my count three years and 68
17 days already.

18 THE COURT: Okay.

19 MR. KING: Is Your Honor inclined to give a stay-
20 away from 196 Hamilton Street?

21 THE COURT: Who's at 196 Hamilton Street? All
22 these people?

23 MR. KING: Some of those people, Judge.

24 THE COURT: No. I just question -- I think that

1 that's pretty broad inasmuch as that's not the scene of the
2 crime, there's not a victim living there, there're not co-
3 defendants that are living there. It's just not -- If he
4 wants to stay out of trouble and doesn't want to get
5 violated, it sounds to me that he would be wise to stay
6 away from people who might be causing problems for him.

7 But, I just think it's too -- it's kind of
8 squishy and I think it's a misuse of the point of
9 probation. I'm concerned it's too broad given what I've
10 heard. So, why don't we go.

11 THE CLERK: Mr. Wurie, would you please stand.
12 Mr. Wurie, as to Indictment No. 2002-11321 001, charging
13 accessory after the fact to assault by means of a dangerous
14 weapon. How do you offer to plead to this indictment, sir?

15 THE DEFENDANT: Guilty.

16 THE CLERK: 003, charging operating a motor
17 vehicle without being licensed. How do you offer to plead
18 to this indictment, sir?

19 THE DEFENDANT: Guilty.

20 THE CLERK: 004, charging operating a motor
21 vehicle so that the lives and safety of the public might be
22 in danger. How do you offer to plead to this indictment,
23 sir?

24 THE DEFENDANT: Guilty.

1 THE CLERK: 005, charging operating a motor
2 vehicle and going away after causing injury to a person.
3 How do you offer to plead to this indictment, sir?

4 THE DEFENDANT: Guilty.

5 THE CLERK: 006, charging assault and battery by
6 means of a dangerous weapon. How do you offer to plead to
7 this indictment, sir?

8 THE DEFENDANT: Guilty.

9
10 (Defendant Sworn.)

11
12 THE CLERK: For the record, Your Honor, I have a
13 "Waiver of Defendant's Rights" signed by the Defendant and
14 his attorney, Mr. Belezos.

15 MR. BELEZOS: Your Honor, may I approach?

16 THE COURT: Yes. Good afternoon, sir. My name
17 is Judge Nancy Staffier Holtz, and I need to ask you some
18 questions.

19 THE DEFENDANT: Yes.

20 THE COURT: And the reason I'm doing that is to
21 make sure that your decision to plead guilty and waive a
22 jury trial is made knowingly, voluntarily, and
23 intelligently, with a full knowledge of the nature of the
24 charges against you and the consequences of pleading

1 guilty. If at any time I ask you any questions and you
2 don't understand them, if you want to take a minute, you
3 can talk to your attorney, or if you want me to try to say
4 it in different wording, I'll do that.

5 And also, please bear in mind that the court
6 reporter cannot get when you say uh-huh or you shake your
7 head, so you have to give audible answers. Do you
8 understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You should be aware that if you're
11 not a citizen of the United States, by pleading guilty you
12 may be denied entry into the United States, denied
13 naturalization, or be deported.

14 Now, first I'd like to ask if you would state
15 your full name.

16 THE DEFENDANT: Brima Wurie.

17 THE COURT: When and where were you born?

18 THE DEFENDANT: Boston, Mass.

19 THE COURT: When?

20 THE DEFENDANT: 2/22/79.

21 THE COURT: And did you go to school?

22 THE DEFENDANT: Yes.

23 THE COURT: How far did you go in school?

24 THE DEFENDANT: Twelfth grade. I got my high

1 school diploma.

2 THE COURT: Okay. And are you married or single?

3 THE DEFENDANT: Single.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: No.

6 THE COURT: And what's the last job you've held?

7 THE DEFENDANT: The last job I held?

8 THE COURT: Well, are you working now?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: What's the last job you held?

11 THE DEFENDANT: It's been a while. I probably
12 would say -- I would say construction.

13 THE COURT: Construction? Just doing just
14 general construction work?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Have you ever been treated for
17 a mental illness or condition?

18 THE DEFENDANT: At one point. Yes.

19 THE COURT: When was that?

20 THE DEFENDANT: 2002.

21 THE COURT: And what was the nature of the
22 treatment?

23 THE DEFENDANT: PTSD. Post traumatic stress
24 disorder.

1 THE COURT: And as far as you know, are you
2 currently being treated -- suffer from that condition?

3 THE DEFENDANT: No.

4 THE COURT: Have you ever been treated for any
5 other mental illness or condition?

6 THE DEFENDANT: No.

7 THE COURT: In the past 24 hours, have you
8 consumed any alcohol or any drugs?

9 THE DEFENDANT: No.

10 THE COURT: Has your attorney reviewed with you
11 the elements of each of these indictments?

12 THE DEFENDANT: Yes.

13 THE COURT: And has he gone over the sentencing
14 that each of these indictments carry?

15 THE DEFENDANT: Yes.

16 THE COURT: By pleading guilty, you give up
17 certain important constitutional rights, which I now wish
18 to review with you and ask if you understand you're waiving
19 these rights.

20 You have the right to a fair and impartial trial,
21 either by a jury or, if you choose, by a judge, to decide
22 whether you are guilty or not guilty. By pleading guilty,
23 you're giving up that right. Do you understand that?

24 THE DEFENDANT: Yes.

1 THE COURT: You have the right not to incriminate
2 yourself, that is, to remain silent. But, by pleading
3 guilty, you're giving up that right. Do you understand
4 that?

5 THE DEFENDANT: Yes.

6 THE COURT: You have the right to confront, that
7 is to look at, and cross examine, that is to question, any
8 witnesses against you. You also have the right at trial to
9 present witnesses and evidence on your own behalf if you
10 chose to, but by pleading guilty, you're giving up this
11 right. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: I want to show you a form and ask
14 you, is this your signature on that page?

15 THE DEFENDANT: Yes.

16 THE COURT: And were you able to read and
17 understand this document?

18 THE DEFENDANT: Yes.

19 THE COURT: It's pretty much the same, some of
20 the same things I'm saying to you now?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Now, what I'm going to do
23 is ask the assistant district attorney to recite the
24 evidence that the Commonwealth would have introduced if the

1 case had gone to trial. I want to ask that you listen to
2 this evidence, because at the end I'm going to ask you if
3 that's accurate. Counsel.

4 MR. KING: Thank you, Your Honor. As I started
5 to say earlier that on September the 8th in the year 2002,
6 shortly after one o'clock in the morning, or just before
7 one o'clock in the morning, Officers Flaherty and Connolly
8 were in patrol in the area of Hancock Street and Columbia
9 Ave. They then saw a white Ford Taurus commit a traffic
10 violation and drive over what they described as an island,
11 and change directions, so now they were heading in the same
12 direction as Officers Flaherty and Connolly.

13 The officers activated their emergency lights and
14 sirens in an attempt to stop the vehicle. The operator of
15 the vehicle disregarded their attempt to stop them and
16 continued on Columbia Road toward Bird Street, to Barring
17 Street, to Virginia Avenue, eventually ending up on Fayston
18 Street, continued at a slow speed. Once that white Taurus
19 hit Fayston Street, it then picked up speed.

20 At the bottom of Fayston Street was another
21 officer, Officer Michael Paillant, and his partner, Tommy
22 Taylor. They were conducting a separate investigation.
23 Officer Paillant observed the white Taurus coming down the
24 street at a high rate of speed with the marked Boston

1 Police transport vehicle behind it with lights and sirens.
2 going. Officer Paillant attempted to stop that vehicle by
3 standing in the middle of the road, raising his hand to
4 stop the vehicle. He was in full uniform at that time.

5 The Taurus continued to pick up speed as it got
6 to the intersection of Fayston and Dunkeld Streets. Officer
7 Taylor drew his weapon in an attempt to protect himself.
8 He then was struck as he attempted to move out of the way
9 of that white Ford Taurus.

10 The officer behind him, Officer Flaherty,
11 immediately put on over the air that an officer had just
12 been struck by a white Taurus. Officer Taylor, at that
13 point, seeing his partner disappear on the other side of
14 that front passenger side of the Taurus as it rounded the
15 corner of Dunkeld Street, discharged his weapon, firing at
16 that white Taurus.

17 He shattered the back windshield. Unknown to him,
18 he also struck Eveline Cepeda Barros, who was the rear
19 passenger, rear middle seat passenger, of the five
20 individuals in the car.

21 The car took a couple more turns. All the
22 individuals, except for Ms. Eveline Cepeda Barros,
23 eventually abandoned that vehicle and left Ms. Cepeda
24 Barros. That injury to Ms. Cepeda Barros was fatal.

1 Also, at the same time, just as Officer Flaherty
2 and Connolly were following the -- Excuse me. Eventually,
3 Mr. Wurie was arrested. He was not licensed at the time,
4 did not have a proper driver's license. And eventually,
5 there was also an investigation into some shots fired from
6 Cushing Avenue that happened just prior to Officers
7 Flaherty and Connolly seeing that white Ford Taurus.

8 The investigation led to recovering ballistics
9 evidence in which a firearm had been discharged shortly
10 just before they observed that white Taurus. The
11 investigation concluded, or indicated that that white
12 Taurus had been up in that area, Cushing Avenue, and that
13 one of the passengers in that motor vehicle, Carlos
14 Fernandes, was a person who discharged a firearm. He was a
15 front seat passenger in that car.

16 THE COURT: That's the John Doe indictment?

17 MR. KING: Excuse me?

18 THE COURT: This was the indictment of John Doe
19 that did assault John Doe --

20 MR. KING: That's correct, Your Honor. No victim
21 was found. And therefore, that's the charge for accessory
22 after the fact.

23 Also, Paillant did have to go to the hospital. He
24 was released a short time later, due to his injuries.

1 And that is a summary of the fact that the
2 Commonwealth would offer at trial.

3 THE COURT: Okay. All right. Sir, did you hear
4 those facts?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that by pleading
7 guilty, you are admitting that those facts are true?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone forced you to plead guilty,
10 or offered you anything, other than the sentencing
11 recommendations, to cause you to plead guilty?

12 THE DEFENDANT: Can you repeat that again.

13 THE COURT: Has anyone forced you to plead guilty?

14 THE DEFENDANT: No.

15 THE COURT: Okay. Has anyone threatened you or
16 induced you to plead guilty to these charges upon facts
17 which are not true?

18 THE DEFENDANT: No.

19 THE COURT: Have you discussed this matter and
20 your options and the possible consequences of pleading
21 guilty with your attorney?

22 THE DEFENDANT: Yes.

23 THE COURT: And you should be aware that these
24 charges, or at least some of these charges, will require

1 you to provide a DNA sample.

2 Understanding everything I've said, do you still
3 wish to plead guilty?

4 THE DEFENDANT: Yes. I already took a DNA --

5 THE COURT: You already did? Okay. Just so
6 you're aware. If you already did, another one's not
7 necessary. That will be up to the corrections people.

8 I find the Defendant is not presently under the
9 influence of drugs or alcohol. I find that the Defendant
10 is not presently suffering from any mental illness or
11 condition. I find the Defendant's guilty plea is made
12 voluntarily and intelligently with full knowledge and
13 understanding of the consequences and that there is a
14 factual basis for the guilty plea. And therefore, the
15 guilty plea is accepted. Thank you, sir. You can step
16 down.

17 THE DEFENDANT: Thank you.

18 THE COURT: The Commonwealth, I assume, moves for
19 sentencing.

20 MR. KING: That's correct, Your Honor.
21 Commonwealth moves for sentencing.

22 THE CLERK: Mr. Wurie, would you please stand.
23 As to Indictment No. 2002-11321 001, charging accessory
24 after the fact to assault by means of a dangerous weapon,

1 how do you now plead to this indictment, sir?

2 THE DEFENDANT: Guilty.

3 THE CLERK: 003, charging operating a motor
4 vehicle without being licensed. How do you now plead to
5 this indictment, sir?

6 THE DEFENDANT: Guilty.

7 THE CLERK: 004, charging operating a motor
8 vehicle so that the lives and safety of the public are in
9 danger. How do you now plead to this indictment, sir?

10 THE DEFENDANT: Guilty.

11 THE CLERK: 005, charging operating a motor
12 vehicle and going away after causing injury to a person.
13 How do you now plead to this indictment, sir?

14 THE DEFENDANT: Guilty.

15 THE CLERK: 006, charging with assault and
16 battery by means of a dangerous weapon. How do you now
17 plead to this indictment, sir?

18 THE DEFENDANT: Guilty.

19 THE CLERK: You may be seated.

20 THE COURT: Does the Commonwealth move for
21 sentencing?

22 MR. KING: We do, Your Honor. As it's an
23 agreed-upon plea, the Commonwealth does not wish to be
24 heard. I would just like to make a recommendation, that's

1 all.

2 THE COURT: Okay. All right. And we have the
3 written recommendation, but why don't you present it onto
4 the record.

5 MR. KING: Thank you. With respect to Indictment
6 001, the accessory after the fact, the Commonwealth and the
7 Defendant agree to a guilty two years straight probation
8 from and after Indictment 006; with respect to Indictment
9 003, operation of a motor vehicle without a license, we
10 agree to a guilty file; 004, negligent operation of a motor
11 vehicle, we agree to guilty two years committed to the
12 Suffolk County House of Corrections concurrent with
13 Indictment 006; with respect to 005, leaving the scene
14 after personal injury, we agree to guilty two years
15 committed to the Suffolk County House of Corrections
16 concurrent with Indictment 006; and Indictment 006, the
17 assault and battery dangerous weapon on Officer Michael
18 Paillant, guilty not more than three years and one day, nor
19 less than three years committed to state prison, deemed
20 served.

21 THE COURT: Okay. And can I just have that
22 listing back. You have a copy for me; right?

23 MR. KING: In light of the Defendant's
24 willingness to plead, the Commonwealth would move to dismiss

1 Indictment No. 002.

2 THE COURT: Okay. And my understanding that with
3 regard -- the Commonwealth had a series of requested terms
4 of probation, but based on my colloquy earlier, I'll just
5 impose, as part of the sentence, the usual terms of
6 probation, Frank, and then I guess that would be it.
7 Whatever the usual terms are.

8 MR. BELEZOS: Your Honor, might the Docket note
9 that the Defendant could petition for review after one year.
10 The Court had indicated earlier --

11 THE COURT: Right. Yeah. We'll set that. I
12 mean legally without prejudice. When we impose the sentence
13 it would be a two-year probationary period with a review at
14 one year to reassess.

15 MR. BELEZOS: I know the Court has already looked
16 at the sentencing. The Defendant does wish -- Just to
17 remind the Court, he did actually do 68 days more than the
18 three years while incarcerated waiting for trial. In
19 addition, he does have a family event on May the 28th in
20 Florida. I want to make that clear to all parties that he
21 will be moving to ask Probation permission to travel down.

22 THE COURT: Okay. Well, I don't have that in
23 front of me now and I guess I would just say with regard to
24 the recommendation, I appreciate that he served more than

1 the committed term that's been recommended, but I also
2 appreciate, based on the prosecution's presentation of the
3 facts of the case, that it was miraculous that it wasn't
4 worse than it was for all involved.

5 And I guess I would just also note that I've
6 indicated, despite the Commonwealth's urging, and I don't
7 think it was an unreasonable request, but I'm not going to
8 impose those terms of probation, but I would certainly just
9 suggest that -- I don't think that the prosecutor is much
10 concerned about the comings and goings and the social life
11 of the Defendant/Probationer-to-be, but these recommended
12 terms of probation are designed to protect the public and
13 to protect the Defendant, the Probationer ultimately.

14 And while they're not required conditions of
15 probation, I think that the Defendant ought to take to
16 heart the sentiment that is behind the request for the
17 curfew and the request for the stay-away. I don't think it
18 was proffered in a mean-spirited way or to trip up the
19 Defendant because of a chance meeting, but rather a bona
20 fide concern for the violence that has occurred in that
21 part of the city and to try to stave that off.

22 So, the Defendant ought to, again, not legally
23 required, ought to take -- I would urge him to take to
24 heart the sentiment that's behind that request because I

1 think it would go a long way to make sure he quickly get
2 through his probationary period and get on with his life.

3 MR. BELEZOS: I appreciate the Court's
4 consideration.

5 THE CLERK: Mr. Wurie, would you please stand.
6 You have pleaded guilty to Indictment No. 2002-11321 006,
7 charging assault and battery by means of a dangerous weapon.
8 The Court, in consideration of the said offense, sentences
9 you to the Massachusetts Correctional Institution at Cedar
10 Junction for a term of not more than three years and one
11 day, not less than three years. You now stand committed
12 pursuant to the said sentence.

13 As to Indictment No. 2002-11321 005, charging
14 operating a motor vehicle and going away after causing
15 injury to a person, the Court, in consideration of said
16 offense, sentences you to the Suffolk County House of
17 Correction at South Bay for a period of two years. This
18 sentence is to be served concurrent with 006.

19 You have pleaded guilty to Indictment No.
20 2002-11321 004, charging operating a motor vehicle so that
21 the lives and safety of the public might be in danger. The
22 Court, in consideration of said offense, sentences you to
23 the Suffolk County House of Correction at South Bay for a
24 period of two years. This sentence to be served concurrent

1 with offense 006.

2 As to each of these indictments, you have ten
3 days within which to file an appeal to the appellate
4 division for review of the said sentence. The Court
5 further orders you to have been deemed to have served
6 whatever time you have spent in custody awaiting
7 disposition of said offense. The Court has been informed
8 you have 1159 days of the said sentence.

9 As to 001, charging accessory after the fact to
10 assault by means of a dangerous weapon, the Court, in
11 consideration of said offense, places you on probation for
12 a period of two years. This probation is to take effect
13 from and after 006.

14 As to 003, operating a motor vehicle without being
15 licensed, the Court orders this indictment be filed. Do
16 you consent to the filing of this indictment, sir?

17 THE DEFENDANT: Yes.

18 THE CLERK: As to 11321 002, charging accessory
19 after the fact to possession of a firearm, the Court orders
20 this indictment be dismissed at the request of the
21 Commonwealth. Do you consent to the dismissal of this
22 indictment, sir?

23 THE DEFENDANT: Say that again.

24 THE CLERK: Do you consent to the dismissal of

1 this indictment, sir?

2 THE DEFENDANT: Oh, yes. Yes.

3 THE CLERK: You are assessed 90 dollars for the
4 victim witness assistance fund; you are to provide DNA
5 samples to the Massachusetts State Police Department; you
6 are assessed 65 dollars per month probation fee, or in the
7 alternative, community service. Please see the Probation
8 Office before you leave here today. You now stand
9 committed. The Court orders time deemed being served,
10 too, as to each.

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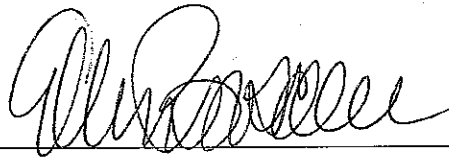
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C E R T I F I C A T E

I, Ellen Roscoe, do hereby certify that the foregoing record, pages 1 through 32, inclusive, is a true and accurate transcription of the aforementioned matter to the best of my skill and ability.

A handwritten signature in cursive script, appearing to read 'Ellen Roscoe', is written over a horizontal line.

Ellen Roscoe

Court Reporter

EXHIBIT N

Fayston/Quincy/Dacia Area**Fayston/Quincy/Dacia Area**

100	200	300

Prepared by the Boston Police Department
Office of Research & Evaluation
October 2, 2002

